The Rights of Women in Islam

WORLD ORGANIZATION FOR ISLAMIC SERVICES

The Rights of Women in Islãm

Murtaḍã Muṭahharī

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In the Name of Allãh,
The All-compassionate, The All-merciful

Praise belongs to Allãh, the Lord of all being;
the All-compassionate, the All-merciful;
the Master of the Day of Judgement;
Thee only we serve, and to Thee alone we pray
for succour;
Guide us in the straight path;
the path of those whom Thou host blessed,
not of those against whom Thou art wrathful,
nor of those who are astray.

O' Allãh! send your blessings to the head of your
messengers and the last of
your prophets,
Muhammad and his pure and cleansed progeny.
Also send your blessings to all your
prophets and envoys.

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ
الْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ الرَّحْمَنِ الرَّحِيمِ
مَالِكِ يَوْمِ الدِّينِ إِيَّاكَ نَعْبُدُ وَإِيَّاكَ نَسْتَعِينُ
اهْدِنَا الصِّرَاطَ الْمُسْتَقِيمَ صِرَاطَ الَّذِينَ
أَنْعَمْتَ عَلَيْهِمْ غَيْرِ الْمَغْضُوبِ عَلَيْهِمْ
وَلَا الضَّالِّينَ

اللَّهُمَّ صَلِّ عَلَى
سَيِّدِ رُسُلِكَ وَخَاتَمِ أَنْبِيَائِكَ
مُحَمَّدٍ وَآلِهِ الطَّيِّبِينَ الطَّاهِرِينَ
وَصَلِّ عَلَى جَمِيعِ الْأَنْبِيَاءِ وَالْمُرْسَلِينَ

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TRANSLITERATION

Symbol	*Transliteration*	*Symbol*	*Transliteration*
ء	ʼ	ل	l
ب	b	م	m
ت	t	ن	n
ث	th	و	w
ج	j	ه	h
ح	ḥ	ى	y
خ	kh	ة	ah
د	d	*Long Vowels*	
ذ	dh	ا	ā
ر	r	و	ū
ز	z	ى	ī
س	s	*Short Vowels*	
ش	sh	ـَ	a
ص	ṣ	ـُ	u
ض	ḍ	ـِ	i
ط	ṭ	*Persian Letters*	
ظ	ẓ	پ	p
ع	ʻ	چ	ch
غ	gh	ژ	zh
ف	f	گ	g
ق	q		
ك	k		

تصــدير

الكاتب الإسلامي الشهير، العلاّمة الكبير، المغفور له "الشيخ مرتضى مطهّري" ـ تغمّده الله برحمته ـ من أشهر الكتاب الإسلاميّين في محال العقيدة و الشريعة. حباه الله سبحانه اصالة في الفكر، و قدرة على حسن العرض، و احاطة بالبحث ـ فيما يتناوله من موضوعات ـ من شتّى جوانبه، بما مكنه من أن يحتل مكانة سامية في الكتاب الإسلاميين في إيران، قلما ضاهاه فيها غيره، و كانت خسارة المسلمين بفقده قدر انتفاعهم بما خلّفه من اثار تحضى كلّها بالمستوى العالي من الأصالة و الابداع.

ولكن من المؤسف ان يحرم القارى الّذي لا يحسن الفارسيّة، من الاتّصال المباشر بآثار العلاّمة المطهّري، و لتلافي هذا الحرمان عزمت مؤسّستنا على ترجمة ما نتمكّن عليه من اثاره، و نشر ما ترجم منها، بحول الله و قوتّه. و قد نشرنا من قبل الترجمة الإنجليزيّة لكتاب ولاءها و

ولايتها، و هذا ثاني اثر لعلاّمتنا المطهّري: **نظام حقوق زن در اسلام** (= نظام حقوق المرأة في الإسلام) نقوم بنشر ترجمته الإنجليزيّة، والحمدلله.

و من المستحسن أن ننبّه إلى أنّنا بعد ما عهدنا بترجمة الكتاب إلى بعض المترجمين خارج إيران، لم نكتف بذلك بل، احلنا الترجمة إلى بعض الاخصائيين في اللغة الإنجليزيّة و ادابها، و قد عمد الخبير المذكور، و من حسن الحظّ انّه يحسن الفارسيّة، إلى الترجمة فقرأها بامعان و دقّة، و قابلها مع النصّ الفارسي فكان من ذلك ان صحّح الترجمة و اكملها، فغيّر و بدل، واضاف و حذف، بل اعاد ترجمة موارد كثيرة رأى انّ المترجم الأوّل قد خانه التوفيق في نقلها إلى الانجليزيّة،كما و قد اضاف على الترجمة هوامش و ايضاحات لم يكن منها بدّ، و بهذا يمكننا ان نقول انا لم نبخل بجهد في هذا السبيل، و كلّ ما نرجوه ان ينفع الله سبحانه القارئ الكريم بترجمته كما نفع باصله، و نضرع إليه عزّ و جل أن يلهمنا الخير و الهداية، و يجنبّنا الخطأ و الزلل، إنّه نعم المولى و نعم النصير.

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١٩٨٠/٧/١٢ — **(لجنة التأليف و الترجمة و النشر)**

طهران ـ إيران

PUBLISHER'S FOREWORD

The famous Islamic writer, the great scholar, the late Shaykh Murtaḍã Muṭahharī, may Allãh bestow His mercy on him, was one of the most celebrated authors in Iran, who had the ability to put forward in the clearest way Islamic ideas pertaining to principles and law. Allãh gave him both the power to think originally and the ability to explain his thoughts in an immediately understandable way; in every subject he tackled, he was able to cover it comprehensively from all aspects; and these powers enabled him to reach his great position among Islamic writers in Iran. The extent of the loss to Muslims on his death is to the same degree as the benefit to them of his writings, all of which are at a high level of originality.

It is a great pity that readers who are not acquainted with the Persian language are prevented from a direct contact with the works of 'Allãmah Muṭahhari, so our Organization has decided to endeavour to the best of their ability to translate and publish them. There is no strength and power except with Allãh. We have previously published

the translation of WILAYAH — THE STATION OF THE MASTER, and now we are presenting the second of his books to be translated *Niḍãm-e ḥuqũq-e zan dar Islam* (The Rights of Women in Islam), praise be to Allãh.

For the information of our readers, this book was first of all given to a translator abroad and then this translation was examined by someone who has a first- hand knowledge of both the English language and literature and who was fortunately acquainted with Persian, who went through every page correcting it and making necessary addition and footnotes. In some places where the first translator had not understood the text, the translation was done again from the original. We can thus say, with praise to Allãh, that we have spared no effort in the translation of this work. We can only pray to Allãh that He make this translation as beneficial to the readers as He has made the original. We beseach Allãh to inspire us with goodness and guidance, to keep us away from error and fault. For He is the best Guide, the best Helper.

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Tehran — IRAN.

بسم الله الرحمن الرحيم

In the Name of Allãh, the Beneficent, the Merciful

PREFACE

The requirements of our age make it necessary to examine and weigh once more many matters about which it is no longer enough to accept the old assessments. The system of family rights and responsibilities is one of these matters.

In this age, for reasons to be pointed out later, it has been commonly supposed that the basic questions in this area are the 'liberation' of women and the 'equality' of their rights with men. All other problems are off-shoots of these two matters.

However, in our opinion the most fundamental problem concerning the system of family rights, or at least one which is on the same level as the basic problems, is to decide whether the family system is independent of other social systems, and whether it employs a special logic and special criteria different from the logic and criteria of any other social institutions; or whether no kind of disparity exists between this social unit and other social

units. Do the very same logic, the very same philosophy, and the very same criteria govern this unit as govern other units and institutions?

The root cause of this doubt is, on the one hand, that the two main parties of this unit are of two different sexes, and, on the other hand, there is the succession of sons and daughters.

The creative process has established the members of this unit with dissimilar and unequal dispositions, and with differing qualities and temperaments. The social structure of the family is one which is semi-innate and semi-conventional, that is to say it occupies an intermediary position between an instinctive social structure, like that of bees and ants, all of whose behavioural limits, rights and "laws" are determined by nature, and a social structure based on convention, like that of human civic society which has a smaller "natural" or instinctive component.

The ancient philosophers, as we know, counted the philosophy of family life as an independent branch of "practical philosophy", and believed that this department of human life had a separate logic and criteria. Plato in his *Republic,* Aristotle in his *Politics,* and Ibn Sina (Avicenna) in his *ash-Shifã',* have all dealt with this subject from this perspective and from this angle.

As regards the rights of women in society, a doubt and questioning also arises, of course, as to whether the natural and human rights of men and women are identical, or not identical. In other words, whether creation and nature, which has granted one series of rights to mankind, has arranged these rights bisexually or unisexually; whether being male or female is relevant to social rights and responsibilities, or whether these rights are the same for both sexes in the eyes of nature and in the logic of creation.

* * * * *

PREFACE

In the western world, subsequent to the seventeenth century, there was a movement in the area of social affairs, which took place in the wake of scientific and philosophical developments, and which went under the name of "Human Rights". The writers and thinkers of the seventeenth and eighteenth century propagated their own ideas regarding natural, intrinsic and undeniable human rights with admirable tenacity. Rousseau, Voltaire and Montesquieu were among this group of authors and thinkers. Human society in general is deeply indebted to them. It may even be claimed that human society is no less indebted to them than to the great discoverers and inventors.

The basic point to which this group gave their attention was that a human being by his nature and by reason of his birth and disposition, possesses a series of rights and liberties. No person or group can, by any means or under any pretext, deny these rights and liberties to any individual or people. The owner of these rights himself cannot, by his free will and inclination, transfer them to anybody else and strip himself or deprive himself of them. Everybody, whether he is a ruler or ruled, white or black, rich or poor, is equal and alike with regard to these rights and liberties.

This intellectual and social movement bore its fruits firstly in England and then in America and afterwards in France through revolutions, changes in the form of governments, signatures to petitions, and gradually these ideas spread to the other countries of the world.

In the nineteenth century, new ideas with regards to the economic, social and political rights of human beings sprung up, and other changes took place which culminated in the appearance of socialism and the requirement of an allocation of a share in profits to the proletariat, and the transfer of government from capitalists to those who defended the working class.

Up to the end of the nineteenth and the beginning of the twentieth century, what was said about human rights and what

practical steps were taken were connected with the rights of the people with respect to governments, or else with the rights of the worker and the proletariat with respect to the employer class and the overlords. But in the twentieth century, the question of the rights of women as opposed to the rights of men arose, and, for the first time, in the "Universal Declaration of Human Rights", which was drawn up after the second world-war in 1948 by the United Nations Organization, the equality of rights of women and men was explicitly declared.

In all the social movements of the west, from the seventeenth upto the present century, all ideas centred around two things : 'liberty' and 'equality'. Keeping in view the fact that the movement for women's rights in the west followed the same sequence as the other movements, and although the history of women's rights in Europe was full of extraordinary hardships as far as their liberty and equality was concerned, still in this case also, nothing other than 'liberty' and 'equality' was discussed.

The pioneers of this movement considered the liberty of women and the equality of their rights with those of men to be the completion and fulfilment of the movement for human rights that had been the central idea since the seventeenth century. They claimed that without securing the liberty of women and establishing equal rights for them and men, any reference to human rights and freedom was meaningless. Moreover, they believed that all difficulties within the family arose from the absence of freedom for women and the inequality of the rights of women and men, and that with the securing of this objective all difficulties in the family would be solved in one swoop.

In this new departure, that which we call "the fundamental question is the system of family rights", that is the question of whether this system is naturally an independent system with its own logic and standards separate from the logic and standards social institutions, or not, was entrusted to oblivion. That. which engaged people's minds was the extension of the principles of

the liberty and equality of women with respect to men. In other words, in the matter of the rights of women, also, the only topic for discussion was the "natural, inalienable, irrevocable rights of man", and nothing more. Everything resolved around the one matter that man and woman are partners in humanity, that woman is a genuine human being, and must therefore enjoy the inalienable and undeniable rights of a human being, just as a man, and in equality with him.

In some of the chapters of this book there is a thorough discussion of the sources of natural rights, and we have proved there that the basic foundation of natural rights is nature it-self. If the human being enjoys certain special rights which the horse, the sheep, the bird, and the fish do not share with him, it is due to his nature, origin and creation. If all human beings are equal in natural rights and every one of them must live in "liberty", it is an order issued in the text of creation itself. There is no other proof. The intellectuals who were supporters of equality and liberty as the natural rights of human beings likewise had no other argument than this.

Now, let us see why the matter which we have called the fundamental question in the system of family rights has not attracted attention. Has it been discovered in the light of modern science that the difference and variation between man and woman is a simple difference in constituent organs, and that this has no effect on their fundamental physical and spiritual structure, the rights which are dependent upon it, and the responsibilities which it engenders? And is this why no separate chapter has been opened for them in modern social philosophies?

It so happens that circumstances are just the opposite. In the light of modern discoveries and advances in the biological and psychological sciences, the differences between the two sexes have become clearer and better documented. In some of the chapters of this book we have discussed this, and have quoted the research findings of biologists, physiologists and psychologists.

It is a cause for amazement that in spite of all this, the basic problem has altogether been left to oblivion.

The origin of this neglect is, perhaps, that these developments took place very precipitately, and the result was that, although it took certain misfortunes away from woman, it brought, as a gift, other sufferings and misfortunes for her and for the whole of society. We shall, in the chapters of this book, see that woman in the west was deprived of even the simplest and most common-place rights up to the early part of the twentieth century, and that only at the beginning of the twentieth century did western man begin to think of redressing the situation; and since this movement was the tail end of other movements in the field of "equality" and "liberty", they expected every miracle to come from the spirit of these two words. They ignored the fact that equality and liberty depends on the relations of human beings with one another, and from the fact that they are human beings. In academic terminology: "Equality and freedom are the right of man according to his degree of being man." Because woman is a human being, she is created free like all other human beings, and so she shares in equal rights. But woman is a human being with particular conditions, and man is a human being with other conditions. Man and woman are equal in their being human, but they are two kinds of human being with two kinds of characteristics and two kinds of psychology. This difference is not the result of any geographical, historical or social factors; rather it is sketched out in the very plan of creation. Nature had a purpose in these two different conditions, and so whatever step is taken against nature and the order of things is bound to produce an undesirable toll. Just as the liberty and equality of human beings, both men and women, has been revealed to us from nature, so we must look to nature to inspire us concerning the uniqueness or the duality of the rights of women and men, and also as to whether the family unit is at least a semi-natural social unit, or not. One point at least can be sketched out: is the bisexuality of animals, including man, merely accidental, or is it a part of the plan of creation? Is the dissimilarity in the two sexes merely on the basic level of constituent organs;

constituent organs; or, in the words of the French biologist Alexis Carrel, is every one of the cells of a human being a sign of his or her sexuality? Do man and woman each have their own special mission in the logic and language of innate disposition? Are rights uni-sexual or bi-sexual? Are morality, and being brought up, unisexual or bi-sexual matters? What about punishment? What about responsibilities and vocations?

In this development, it was forgotten that there are other matters besides equality and liberty to be taken into consideration. Equality and liberty are necessary conditions, but they are not sufficient. An equality of rights is one thing, but an identicalness of rights is something else. The equality of the rights of man and woman from the point of view of their material and spiritual value, is one thing, but their parity, uniformity and identicalness is another thing. In this development, intentionally or unintentionally, 'equality' is taken to mean 'identicalness', and 'equivalence' or 'uniformity'. Quality has been eclipsed by quantity : in the attempt to remember woman's 'manness', her 'womanness' has been forgotten.

This inadvertence, in fact, cannot be counted merely as a philosophical inattentiveness arising out of undue haste. There were other factors at work also that wanted to take advantage of this 'liberty' and 'equality' of women.

One of those factors was that the aspirations of capitalists were involved in this current. Because factory owners wanted women to be attracted from their homes to the factories, and because they wanted to benefit from their economic power, they took up the banner of the rights of women, their economic independence, their liberty, the equality of women's rights with those of men; and it was only these people who could give these demands a legal acceptance.

In chapter nine of his *The Pleasures of Philosophy,* after quoting some of the contemptuous ideas of Aristotle, Nietzsche,

Schopenhauer, and some of the holy books of the Jews about women, and after pointing out that although the liberty of women was also talked about during the French Revolution, without there being any practical change in their position, Will Durant remarks: "Until 1900 or so a woman had hardly any rights which a man was legally bound to respect." (p.131). He then writes about the causes for the change in the status of women in the twentieth century: "The emancipation of 'woman' was an incident of the Industrial Revolution." He continues in his own words: "They (women) were cheaper labour than men; the employer preferred them as employees to the more costly and rebellious males. A century ago, in England, men found it hard to get work, but placards invited them to send their wives and children to the factory gate . . . The first legal step in the emancipation of our grandmothers was the legislation of 1882, by which it was decreed that thereafter the women of Great Britain should enjoy the unprecedented privilege of keeping the money they earned.* It was a highly moral and Christian enactment, put through by the factory- owners in the House of Commons to lure the ladies of England into attendance upon their machines. From that year to this the irresistible suction of the profits motive has drawn women out of the drudgery of the home into the serfdom of the shop." (*ibid.* pp.131-132)

* In his comments on the Civil Law of Iran, Dr. ʿAli Shãygãn (p.266) writes: "The independence that a woman has with respect to her own possessions which Shiʿite jurisprudence acknowledged from the very beginning, did not exist in Greece, Rome or Germany nor in the law of most countries until recently. She was forbidden to excercise any right of ownership over her property, just like a minor, a lunatic or an interdicted person. In England, where in the past the personality of a woman faded into insignificance before the personality of her husband, two acts were passed, one in 1870 and the other in 1882 A.D., called the law of the married woman's right to ownership, which lifted this prohibition from women.

The development of mechanization and the ever-increasing growth in production at a rate greater than the level of the actual needs of people, the necessity of persuading consumers through thousands of deceptions and frauds, the urgency with which all auditory, visual, psychological, sensory, aesthetic, artistic and venal means to transform man into an involuntary agent of consumption, further required that the capitalist should take advantage of woman's existence; not of woman's physical strength or her work power as a simple worker sharing with man in production, but rather of her power to attract with her beauty, by trading in her honour and respect, through her power to entice, to captivate minds and wills and to transform them, to impose consumption on consumers. It is clear that all this was done in the name of her 'liberty' and her becoming 'equal' with man.

Politics also did not lag behind in making use of this factor; one can read the circumstances of this regularly in newspapers and magazines. In all these things, the existence of woman is exploited and woman is used as a means for accomplishing the aims of man: and all this under the cover of 'liberty' and 'equality'.

Clearly the young man of the twentieth century did not fail to avail himself of this precious opportunity. He stopped taking on the traditional responsibilities with regard to women, and made the seeking of a partner something cheap and gratuitous, seizing her in his talons. Then they shed more crocodile tears than before over the misfortunate of women and the unjust discrimination against her. And, finally, so as to avail themselves more fully of the pleasures of this world, they delay their marriage until they are forty and later; and then even prefer to remain bachelors.

There is no doubt that our century has removed a whole series of misfortunes from women, but the point is. whether it has not actually brought another series of misfortunes as a gift. What is the reason for this? Is woman condemned to one of these two calamities, and forced to choose one of them, or is there nothing to

hinder her from banishing her old misfortunes, as well as the new misfortunes?

The fact is that there is no compulsion or inevitability. The misfortunes of the olden days were mostly caused because the fact that a woman is a human being was forgotten, and her modern misfortunes are because, intentionally or otherwise, the womanliness of a woman, her inborn tendencies and nature, her mission, the axis around which she turns, her instinctual needs and her special capabilities are totally ignored.

It is really strange that whenever the dissimilarity in the innate characteristics and nature of women and men is brought up, a section of people interpret this as meaning the defectiveness of woman and the perfection of man, and ultimately as something which necessitates a series of benefits for man and a series of privations for woman, forgetting that defectiveness and perfection is not under consideration. The scheme of creation did not seek to create one perfect and the other imperfect.

After their logical and wise interpretation, these people exclaim: “All right, since nature was so cruel to woman, and created her weak and imperfect, should we aggravate the situation and add injustice to injustice? If we consign woman’s natural disposition to the realms of oblivion, will we not make her more human?”

The situation, incidentally, is just the reverse. Indifference towards the natural and innate disposition of woman has entailed the violation of her rights. If man confronts woman and tells her: “Now you are one and I am one. All tasks, duties, profits, rewards and punishments will be alike and equal, and in all difficult, heavy work you will be my partner and receive compensation in proportion to your work force; do not expect any special respect and support from me; be responsible for all your living expenses; share with me the expenses of children; defend your-self against all dangers and perils; spend as much on me as I do on you ...”, that is, the occasion for

woman to throw in the sponge, because her labour strength and productive power is naturally less than that of a man, and the drain on her earnings is more. Besides, her monthly period, the inconveniences to her during pregnancy, the difficulties of labour and the bringing up of the child, have all placed her in a situation where she is under the protection of man with fewer responsibilities and more rights. This is not confined to human beings alone: all animals that live in pairs behave like this. In all these species the male instinctively rises up to protect his female partner.

If the natural and innate disposition of both sexes is kept in view, and their equality in being human and in the shared rights of humanity is remembered, then woman will find herself in a very favourable position: neither will her person nor will her personality be crushed.

Because of inattention we find that the natural, innate circumstances of the two sexes are forgotten and in the end everything depends on liberty and making things equals; it would be better to look at those people who, prior to us, started out on this route, and have reached the end, and see what they have said and written.

In the magazine *Khãndanīhã* (“Things to Read” no. 79, year 34, 4th Tir, 1353) there is an article from Mãhnãmah Shahrbãni under the title of “The Adventures of Women Workers in American Society “. It has been translated from a magazine called *Coronet.*

This article is detailed and is worth reading. It begins with the grievances of one woman. The writer describes how, in the name of equality between man and woman, the allowances that used to be made for women workers no longer exist. For example, they used not to be required to lift any weight more than 25 lbs. (12 kilos) while there was no such limit for men workers. She says: “the working conditions in the General Motor Factory, in Ohio

State, or, to give it a better name, the place where, at present, 2,500 women are toiling in wretched conditions, have been changed . . .” The said woman describes herself attending to a very powerful steam-engine or cleaning a 12 kilogramme metallic oven which, shortly before, a strong muscular man had set in its place, looked at it and said to himself: “I am all worn out!” She says that every minute the has to lift up onto a hook a 25 to 50 inch lever weighing over 35 lbs. Her hands are always swollen and aching.

This article afterwards narrates the grievances, anxieties and apprehensions of another woman, whose husband is a sailor in the navy. Recently the Admiral took the decision that a number of women would be employed to work on board a man’s ship. She writes: “Meanwhile the naval authorities sent a ship on duty with 40 women and 480 crew. When the ship returned after her first mixed sea voyage to the port, the excitement and anxiety amongst crew members was such that an inquiry was held, and it was soon discovered that not only had many love affairs developed during the voyage, but that most of women had also had sexual relations with several man, not just one.”

The article continues that in the State of Florida the worry after ‘liberation’ was that widows would suffer, because one of the judges of that State, called Thomas Testa (?) announced that the law that exempted widows from paying income-tax on sums upto 500 dollars was null and void. The judge considered that this particular law amounted to a discrimination against men.

Then it says that Mrs. McDaniel has aching hands, Mrs. Stone (whose husband is a sailor) is anxious and apprehensive, and the widows of Florida have been fined; all of them have had their taste of freedom. For a large number of them the question arises as to whether women have lost more than they have gained. As of now there is no purpose in further discussion because the game has already started, and the spectators have just managed to find their seats. It has been resolved that this year (1974) the twenty-seventh amendment in the Constitution of America be passed, and

according to that amendment the showing of any preference on the basis of sex becomes illegal. Thus the assertions of Dr. Rosko Bavand (?), professor of Harvard Law College, that the freedom of women will be the source of regrettable results for the situation of women's law in America, will come true.

One of the senators from North Carolina, Mr. G. Irwin, after studying mixed American society where rights were equal declared that family laws should all be changed. No man should any longer be held legally responsible for covering family expenses.

The magazine writes that Mrs. McDaniel says that one of the women-workers, because of lifting a heavy weight, became afflicted with inner bleeding. "We want to return," she says, "to our previous position. We want men to treat us as women and not as workers". She adds that it is a very simple matter for the upholders of women's liberation to sit in their plush drawing rooms and declare that men and women are equal, because they have never visited any factories. They do not realize that most of the wage-earning women of America must, like herself, work and drudge in factories. She further says that she does not want this equality, because she cannot carry out the job which is meant especially for men. Men are physically stronger than women, and if she were called upon to compete in work with them and her work were compared, she would prefer, on her own behalf, to leave the work. The concessions which the women-workers of Ohio have given up are more than the privileges and benefits which they got through the law of protection for workers. She finally says that women have forsaken the individuality of womanhood and that she cannot understand what they have gained since their 'liberation'. It is possible, of course, she says, that the position of a limited number of women may have improved; but working-women are decidedly not amongst those.

This was a short summary of the article. From the contents of the article it is evident that these women, because of the

troubles that have been imposed on them in the name of liberty and equality, have lost patience to such a degree that they are now the enemies of these two words, little understanding that these two words are not evil in themselves. Woman and man are two stars in two different orbits. *It is not for the Sun to over-take the Moon, nor does the night outstrip the day. They float each in a heaven.* (Qur'ãn, 36:40)* The basic condition for the happiness of both man and woman, and, in fact, for the whole of human society, is that each of the two sexes should continue to move in their own orbit. Liberty and equality will be of benefit to them as long as neither of them leaves his or her natural orbit and direction. What has sown trouble in that society is that they have risen up against the natural order, and nothing else.

What we are claiming is that the question of the system of rights for woman in the home as well as in society, should once again be assessed, and that we should not be satisfied with-the assessments of the past. We mean that we should firstly take nature as our guide, and secondly draw the maximum benefit from the experiences of the past and the present centuries, whether good or bad. It is only then that the development of rights for women will, in its real sense, be fulfilled.

* * * *

The Holy Qur'ãn is accepted by its friends and its enemies as the upholder of the rights of women. Its opponents accept at least this much, that the Qur'ãn in times of revelation took long steps forward for the benefit of women and for their human rights. But the Qur'ãn never neglected the womanliness of women and the manliness of man in the name of restoring woman to the status of a human being and making her the partner of man in humanness and in human rights. In another words the Qur'ãn

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* لَا ٱلشَّمْسُ يَنۢبَغِي لَهَآ أَن تُدْرِكَ ٱلْقَمَرَ وَلَا ٱلَّيْلُ سَابِقُ ٱلنَّهَارِ
وَكُلٌّ فِي فَلَكٍ يَسْبَحُونَ.

looked at woman as she is in nature. In this respect there is complete conformity between the decrees of the Qur'ãn and the decrees of nature. These two great books of God, the one created and the other compiled, coincide with each other. In the following articles, if they can do something useful and new, there will be found an exposition and explanation of this conformity and harmony.

* * * *

What is now before the respected reader is a collection of articles which the author wrote in special circumstances in 1345 (Sh.) , 1966/7 A.D.; they were published in the magazine *Zan-e rũz* under the heading *Zan dar ḥuqũq-e Islãmī* (Woman in Islamic Rights). The articles were read with much interest. When those people who do not know the background, and who were not involved at the time, hear that these articles were published for the first time in that particular magazine, they will certainly be surprised that I chose the above magazine for their publication. They may be also surprised that that magazine consented to publish these articles without any interference or cuts. It is therefore necessary to mention the circumstances of the publication of these articles.*

In 1345 (Sh.) , 1966/7 A.D., the climate of magazines and periodicals, especially women's magazines, saw a sharp rise in temperature caused by the discussion of changes in the Civil Law in connection with family rights. As most of the proposals that were put forward were contrary to the actual text of the Qur'ãn, there naturally arose uneasy feelings amongst the Muslims of Iran. In the midst of this, Judge Faqid Ibrahim Mandavi Zanjãni caused more agitation than anyone else and added fuel to the fire. He drew up a bill for this purpose,

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* *Zan-e rũz* ("Modern Woman") used to be a rather glossy, western-style woman's magazine. It is still published, but, of course, with a more independent and Islamic editorial policy. (tr.)

containing forty articles and got it published in the above named magazine. The magazine published the article with blaring headlines and attached what were in those days called “coupons”, requesting its readers to offer their opinions regarding those forty proposals. The said writer, by the way, promised that in the course of a series of articles in the same magazine, he would put forward his arguments in sup-port of his forty proposals.

At about that time, I received a telephone call from a respected and well-known Islamic centre in Tehran who expressed their opinions, and in a meeting with the editors of *Kayhãn* and *Itilã‘ãt** publishing houses, I made reference to some of the matters published in their women’s publications. The editors stated that if I had anything I wanted to write I could give it to them, and they promised that my articles would be published in entirety.

After they had proposed this, the two gentlemen made a suggestion. They said that if time and circumstances permitted, I could go through those magazines and make some necessary notes about each issue. I said that I was not ready to write comments on every issue, but that since Mandavi had promised to write a series of articles in defence of his ‘forty articles’ in *Zan-e rũz,* I was ready, during the publication of that series, to make my comments on those forty articles on the opposite page of the same magazine, so that both ideas could be exposed to the public. The gentlemen asked me to give them time so that they might once again contact the Directors. Once more, they contacted me on the telephone and informed me that the magazine had agreed. After this exchange I wrote a letter to that magazine, declaring my readiness to defend the Civil Law in so far as they were in agreement with Islamic Law, and requested them to publish my articles in the magazine alongside the articles of Mandavi.

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* Both large tabloid publishing houses, printing both newspapers and magazines. (tr.)

I incidentally reminded them that in case the magazine agreed to my suggestions, they should publish my letter, as it was, with their notice of consent. The magazine agreed and printed that very letter of mine along with their notice of consent in their issue no.87 dated 7th Ãbãn, 1345 (Sh.) (29.10.1966), and the first article appeared in issue no.88.

During my previous studies about the rights of women, I had read a book written by Mandavi, and for some time I had been conversant with his logic and that of others like him. Besides that, I had been deeply interested for many years in the subject of the rights of women in Islam, so I had ample material with me on the subject and I was fully prepared. The article by Mandavi were published and my articles were given the space alongside his articles. Naturally, I had to start from where he started, but it soon proved too difficult for him to carry on with the articles. It was not more than six weeks later that he died as the result of a heart attack and was thus freed from writing the replies for ever. During that period of six weeks these articles had made their mark. Those readers who had been interested in the articles appealed to me and to the magazine to continue the articles. This appeal was agreed to and thirty-three articles appeared in the magazine. These were the circumstances of the publication of these articles.

Although in these thirty-three articles only a part of the matter that I had in mind was dealt with and much remained to be discussed, due to my tiredness and certain other things that diverted my attention elsewhere, I had to stop writing the series. Those who had read the articles with interest have been pressing all the time for the publication in book form. On my part, since I wanted to finish off the task and to publish some where a complete work on the system of women's rights in Islam, I did not agree to the simple reprinting of the articles. At last, when I felt that I could not expect to complete the work, I decided to be content with what there was.

In this series of articles, the aspects of the problem that have been dealt with are: proposing ; fixed-term marriage *(mut'ah);* woman and social independence; Islam and the modernization of life; the status of women in the Qur'ãn; self-respect and human rights; the natural foundations for family rights; the differences between woman and man; dowry; maintenance; inheritance; divorce; and polygyny.

Other aspects of the subject that remain to be discussed and for which I have study-notes already prepared are: the right of the man to maintain order in the family; the right of guardianship of a child; the period of *'iddah* for women between marriages and its philosophy; women, *ijtihãd* (competence in Islamic juris-prudence) and *iftã'* (giving legal opinions); women and politics; women and the appointment of judges; the education of women and ethics; women's dress; sexual morality; honour, chastity, modesty, etc.; motherhood; women and out-door work, and a number of other matters. If I am favoured with an opportunity by God, I shall collect together and edit this part as well, and publish it as the second volume of this book.[1]

Requesting success and guidance from Allãh;

Murtaḍã Muṭahharī.

28th Shahrivar, 1353 H.Sh

2nd Ramaḍãn al-mubãrak, 1394 H.Q

19th September, 1974

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1. Unfortunately never published.

INTRODUCTION

1. Family relations — a world problem.

*** Should we be independent or follow the West?**

*** Historical determinism.**

2. The constitution and ourselves.

3. The attachment of the -Iranian nation to religion.

INTRODUCTION

I am glad that the magazine *Zan-e rũz* has accepted my request to discuss the forty-point proposal for amendments to sections of the Civil Law of Iran pertaining to, and connected with, family matters. The magazine has recorded its willingness in its next issue to publish this series of articles on the strength of my message.

I very much value this opportunity which will give me an occasion to reveal to young people one aspect of the social philosophy of Islam. I hope to enlighten their minds so that they may comprehend the Islamic concept regarding the problems connected with family life.

As I mentioned in my letter, I did not intend to take a stand in defence of the existing Civil Law, holding it to be perfectly, thoroughly and a hundred per cent in accordance with the Islamic Law and with true social standards. I myself perhaps entertain certain misgivings about them, and I do not either want to claim that the customs in this particular domain prevalent

amongst the majority of our people are proper and justified. On the contrary, I even point out irregularities and confusions in family relations, and believe that basic reforms are necessary in this connection.

I would not, however, put all the blame on the Civil Law of Iran, like the writers of the book *Criticism of the Constitution and Civil Law of Iran* * and another book, *The Sacrament or the Pact of Marriage.*** I do not see any reason to exonerate the people entirely. I also do not accept the idea that the defects and flaws in the Civil Law are due to its being in conformity with the Islamic Jurisprudence, and similarly do not think that the only way to reform is to bring about changes in the Civil Law. That part of the Islamic Law about the rights of husband and wife, their treatment of each other and of their offspring and outsiders, has also been attacked, and a proposal for its change has also been put forward. I shall deal with these one by one in this series of articles and shall prove that these laws are in complete conformity with subtle psychological, natural and social objectives. In these laws the status and dignity of both man and woman has been fully safeguarded. If these laws are fully followed and scrupulously executed, they are sure to establish the best of family relations.

With the permission of my esteemed readers, I wish to lay before them a few points before I start discussing the main subject :

1. FAMILY RELATION — A WORLD PROBLEM

The problem of family relations in our age is not so simple and trivial as may be resolved by filling up questionnaires by boys

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* Manuchihriyãn, Bãnũ Mihr anqīz — *Intiqãd bar qavãnin-e asãsi va madani-e Iran.*

** Zanjãni, Ibrãhim Mandavī — *Paymãn-e muqaddas yã mīthãq-e izdivãj.*

and girls or by holding seminars — like the seminars I saw and heard of, and the level and standard of intellect that was displayed in them, which is not peculiar to our country. Other nations have also not been able to find a solution to the problem, nor do they claim to have found one.

The philosopher Will Durant, the well-known writer of *The Story of Civilization,* writes: "If in imagination we place ourselves at the year 2,000, and ask what was the outstanding feature of human events in the first quarter of the twentieth century, we shall perceive that it was not the Great War, nor the Russian Revolution, but the change in the status of woman. History has seldom seen so startling a transformation in so short a time. The 'sacred home' that was the basis of our social order, the marriage system that was our barrier against human passion and instability, the complex moral code that lifted us from brutality to civilization and courtesy, are visibly caught in that turbulent transition which has come upon all our institutions, all our modes of life and thought." (*The Pleasures of Philosophy,* New York, 1953, p.129).

Today, similarly, when we are living in the last quarter of the twentieth century, the lamentations of western thinkers are all the more articulate when they witness around them the break-up of family ties, the weakening of the foundations of marriage, the evasion of young people in accepting the responsibilities of marriage, the dislike of being a mother, the dwindling of paternal and maternal affections, indulgence in the satisfaction of temporary passions instead of love, the ever-increasing incidence of divorce, the galloping increase in the number of illegitimate children, with unity and sincerity being a very rare thing in married couples.

Should we be independent or follow the west ?

It is regrettable that quite a number of uninformed people have the impression that the problems connected with family

relations are like the technicalities of taxi-driving, plumbing, electricity, etc. European experts solved these technical matters years ago ; we are the people who do not have that efficiency and capability and so, they think, we should follow and imitate them as early as possible.

This is a totally wrong idea. As far as the problems under discussion are concerned, westerners are more preoccupied than we are ourselves, and the wailings and cries of their intellectuals are louder. Leaving aside the question of the education and instruction of women, western thinkers are in all matters concerning women more perturbed than we are ourselves and have less satisfaction in the contentments of family life.

Historical determinism :

Another section of our people think that the lack of warmth and attachment in family ties and the creeping in of destructive influences is the effect of the liberation and undue freedom of women; that freedom, according to them, is the unavoidable result of industrial life and advancement in learning and civilization. It is the force of history, and there is no alternative, they say, except to tolerate and endure this confusion and disorder. The excellence and dignity of family life that was current in former days, they add, should be forgotten for ever.

If we hold such a view, we have a very superficial and erroneous view. We agree that in the west, industrial life did affect and still does affect family ties, but what primarily interrupted the balance of orderliness in family life are two other things apart from that.

Firstly, there were primitive, oppressive and unjust laws for women in Europe. These laws were in force till the present century. The helplessness of women can be gauged from the fact that it was in the nineteenth and at the beginning of the twentieth century that woman was legally acknowledged for the first time to be capable of owning property.

Secondly, those persons, who undertook to ameliorate the condition of women and raise their status, happened to use the same method that is being adopted at present by some of our so-called intellectuals. The outlook put forward in this forty-point proposal is one of such examples. These people have, so to say, while desiring to improve her eyebrows, actually deprived the helpless woman of her eyesight.

The obsolete laws of yesterday's European together with the new amendments to them, are thus more responsible for the chaos and disorder than industrial life. In such circumstances, it is not in the least necessary for us, Muslims of the east, to follow strictly in their footsteps and go the way they go, and tread the nasty path they tread. We should remain always cautious towards western life-styles. While making use of, and acquiring, those of their sciences, arts and technical subjects, and also those parts of their social behaviour which are excellent and commendable, one should also refrain from aping and imitating them in all their customs, habits and especially laws. These laws have been a source of innumerable miseries for themselves; and reforms in the Civil Law of Iran and their being brought into line with European laws means, in practice, sharing those miseries with them.

2. THE CONSTITUTION AND OURSELVES

Apart from the fact that the said proposals are at once devastating and against psychological, natural and social exigencies, as will be explained later on, there remains the question: what about their conformity with the Constitutional Law of Iran? The Constitution of Iran clearly mentions that any law or proposed law which stands in contradiction with the Islamic Law is void and cannot be passed in either of the two Houses of the Iranian Parliament. The matter incorporated in these proposals is, on the face of it, in contradiction with the Islamic Law. Can those westerners whom our worshippers of the west blindly follow ever imagine turning their own Constitution into a play-thing like this?

Besides religious considerations, the constitution of every country has a special sanctity for the people of that country. The Constitution of Iran also has a special sanctity for the Iranian nation as a whole. Can the Constitution of Iran be trampled under-foot by seminars, by the printing of questionnaires, and by the bobbing up and down of members of Parliament ?

3. THE ATTACHMENT OF THE IRANIAN NATION TO RELIGION

If, for the time being, we leave the discordance of the proposal with the Constitution alone, and forget everything else, one thing can never be forgotten : that nowadays too, the strongest sympathy which governs the mentality of Iranians is their Islamic sentiments. With the exception of a very limited number, who have traversed all limits and readily support any disorder and confusion, the great majority of the people follow the stipulations of religion.

Against the prognostications of some people, even modern education and training has not caused any estrangement between this nation and the religion of Islam. In spite of the fact that religion in its true sense is not being propagated, and capitalism, which is contrary to Islam, is more often presented, the people who have had a modern education, and students, are becoming more and more inclined towards Islam.

Now, I ask, how will the proposed laws suit this mental background, when that background is necessarily there whether you like it or not? To be more explicit, when the Civil Law of the country is not in conformity with the aspirations of the people and with the clear commandments of the *sharī'ah* of Islam, what can be the result? Suppose that due to certain differences and anger, a woman files a suit in a Court of Law, and, against the will of her husband, is granted a degree of divorce, and after-wards marries another person. These persons, the new husband and wife, although they consider themselves legal husband and wife under the Civil Law

of the country, will in the depth of their religious conscience, consider each other as strangers. They are bound to feel pangs of conscience, however occasionally and stealthily, and consider their association sinful, their children illegitimate, and themselves deserving the punishment of death.

Now, imagine in what a miserable psychological situation they will be placed; what will be their position and the position of ‘their children in the eyes of their religious minded friends and relatives. We cannot possibly change the religious conscience of the people by legislation and amendments to the law, Fortunately or unfortunately, the convictions of the majority of these people are so strong that they cannot be quit of their religious sympathies.

If you were to invite an expert in law and psychology from a foreign country and discuss with him and tell him what you want to legislate and what the background and the convictions of your people are, do you imagine that he would agree with you? Would he not say that such steps are bound to create innumerable mental and social miseries?

It is a great mistake to compare this kind of law with penal laws as regards how bad the effects resulting from them are. They are as different as the earth is from the sky. The impact which results from changes in and abrogation of the penal laws is quite clear to society and only deviated people will be encouraged. But laws connected with married couples and children are related to people’s individual lives, and can be directly in conflict with each individual’s personal religious sentiments. This kind of law will either remain without practical effect due to the influence of religion and the triumph of the conscience, and inevitably the unhappiness which this kind of law causes will result in its being officially abolished, or else, after a soul-destroying spiritual struggle, it will weaken the power of religion.

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PART ONE

PROPOSAL AND ENGAGEMENT

* **Does a man's proposal of marriage insult a woman?**
* **It is a man's instinct to make the approach and ask, and a woman's instinct to be a source of attraction and to act with self-restraint.**
* **Man seeks union with woman, not to enslave her.**
* **The custom of asking the hand of woman in marriage is a very safe and wise way of safeguarding the honour and prestige of a woman.**
* **Errors by the writer of the forty proposals in understanding the Civil Law.**

PROPOSAL AND ENGAGEMENT

I begin my discussion about the proposed forty articles from the very point they themselves begin. Those proposals for the Civil Law start with the subject of proposal and engagement.

The fact is that the articles relating to proposal and engagement laid down in the Civil Law are not straight Islamic Laws. In other words, the specific text and command from Islam itself about most of them is not cited. Whatever the Civil Law has cited in support of these Articles is all based upon precepts that are deduced from general Islamic beliefs. So we do not consider ourselves obliged to defend the Civil Law, and we shall not enter into a discussion of the individual ideas of the proposer. For the proposer has perpetrated some great mistakes, and is even unable to perceive the correct meaning of some simple articles.

However, there are two points here which cannot be waived aside.

Does a man's proposal of marriage insult a woman? The writer of the proposals says :

"Our legislator did not loose sight of the reactionary and inhuman attitude in these few simple sections of the law (relating to proposal and engagement) whereby man as such is the principal figure and woman the secondary. In pursuance of this conception, Article 1034, the opening Article of the section on marriage and divorce, has been drawn up in the following way: 'Article 1034. One can propose marriage to any woman who is free of impediments to marriage'. It is evident that although the Article does not contain any order nor assign any obligation, marriage has nevertheless been brought up for consideration as the "taking of a wife" by man. He is treated as a customer or buyer while the woman is represented as some sort of merchandise. In social laws, expressions like this create a very bad and distasteful psychological effect; the above-mentioned definitions in the laws of marriage especially have an effect upon the relations between men and women, and give man the position of master and owner and woman the status of something owned or of a slave."

After such subtle psychological observations, the said proposer puts forward the draft of an article to do with asking the hand of a woman in marriage. His aim is that the proposal should not be on the initiative of one side only, so that the phrase "taking a woman in marriage" should not apply to the matter. He thinks that proposing should be the affair of women as well as of men, so that marriage may not only be considered as the taking possession of women, but also as the taking possession of men; or, at least, so that it may be neither taking a woman in marriage nor taking a man in marriage. If we say "taking a woman in marriage", and always consider it the duty of a man to ask the hand of a woman in marriage, we will be lowering the status of women and treating her as a purchasable article.

It is a man's instinct to make the approach and ask, and a woman's instinct to be a source of attraction and act with self-restraint :

Incidentally, this very error is one of the most serious ones. It is at the root of the proposal for the annulment of dower (*mahr*) and maintenance of the wife (*nafaqah*), *so* we shall fully discuss it with the subject of *mahr* and *nafaqah* in its proper place.

From time immemorial man has approached woman with his proposal and has requested conjugality from her. This has been the greatest of factors in safe-guarding the prestige and honour of women. Nature has created man a means of approach, love and solicitation and woman a source of attraction and being loved. Nature has imbued woman with the disposition of a flower and made man the nightingale, woman the lamp and man the moth. This is one of the wise schemes and plans of creation. Man is instinctively disposed to seek and ask, and woman is instinctively disposed to display herself. The tenderness of her body thus finds its compensation in comparison with the strength of man.

It is contrary to the respect and honour of a woman to run after a man and woo him, while for a man it is manly that he should approach and solicit a woman for this purpose even if he gets a reply in the negative. In that case he will ask one woman after another until he meets a woman who gives him her consent.

While for a woman, who aspires to be the object of affection, the beloved, the adored one, to submit to the heart of a man who will govern her existence, it is repugnant for her to invite a man to be her spouse, and, if it happens that her request is turned down, to go in search of another man.

William James, the well-known American philosopher, is of the opinion that the delicate self-control of women is not instinctive, but rather that the daughters of Eve, in their long history, have learnt that their honour and prestige do not lie

in going after a man and in making themselves commonplace, but in keeping themselves aloof beyond the reach of man; women have learnt this lesson over the long span of history, and they have passed this knowledge on to their daughters.

This is not the case with human beings only. Other animals also behave like this. It is always the function of the male to present himself impatiently and earnestly before the female. The function entrusted to the female is to display her attractions, to invite attention with due self-control and restraint, and thus capture the heart of the rougher sex and accept the male by the tender consent of his heart, and thus render him willingly to carry out her commands.

Man seeks union with woman, not to enslave her :

It is strange that it should be questioned why the Civil Law uses a language suggestive of the meaning that man is the one who asks the woman. Firstly, the question is mistakenly directed against the Civil Law. It is in fact to do with the law of creation. Secondly, a thing desired does not become your property, nor do you become its owner: students and scholars are desirous of knowledge, a pupil desires a teacher, apprentices of crafts desire skillful craftsman. It is proper that, in the case of the desire of scholars and craftsman, we call those who seek them their owners? Man is desirous of onion with woman, not in need of making her his slave. Can one really consider it an insult to the female sex when Ḥãfiẓ, our sweet-tongued poet, composed these lines :

Shīrãz is the home of ruby lips, and the mine of beauty;
I am a penniless jeweller, and it makes me anxious.

It is a town full of beckoning glances and beauty in all directions;
But I have nothing, otherwise I would be the buyer of all.

Ḥãfiẓ is sorry that he has nothing to shower over the beauties to attract them to him. Is this derogatory to the position of women, or is it an expression of admiration and a recognition of the greatest honour and of their value in hearts that are alive and sensitive? The poet, in spite of all manliness and virility, pays homage, and gives vent to feelings of admiration before the charms and beauties of women and admits to have fallen in love with them, while they are heedless and take no notice of him.

It is the height of her excellence that she can attract man to her wherever he is, and whatever state he is in.

Now it can be seen how far the best of her distinctions, her honour and respect is blemished in the name of women's rights.

This is what we meant when we remarked that 'these people, designing to improve her eyebrows have actually deprived the poor woman of her eyesight'.

The custom of asking the hand of woman in marriage is a very safe and wise way of safeguarding the honour and prestige of a woman:

As we have mentioned, in the law of creation man is created as a source of solicitation and approach, and is the suitor, while woman is a source of what attracts and responds. This is the best guarantee of her prestige and respect and the counteraction to her physical weakness as against the physical strength of man. This is the best security in the maintenance of balance and proportion in their life together. One is the natural advantage that has been given to woman and the other is the natural obligation which man is bound to fulfil.

Laws made by man, or, in other words, the legal precautions he employs, should safeguard this advantage for women and this obligation on man. Laws based on the equality of man and woman as far as the duty and civility of proposing are concerned act against the woman and respect for her and her honour; equality

is outwardly in the interest of man, and works, in fact, against both of them.

These are the reasons that the draft of the Article put forward by the writer of the forty proposals to make woman share in the duty of proposing does not have any value and is injurious for the whole human race.

Errors by the writer of the forty Articles in the Civil Law:

The second point that must be mentioned in connection with this chapter is that Mr. Mandavi, the writer of the forty proposals* writes: "According to Article 1037, if either of the persons engaged in marriage turns down the marriage undertaking without any sound reason, the gifts that the opposite side, their parents or any third person, have presented in anticipation of the consummation of the marriage, should be returned. In case the original articles no longer exist their value must be returned, unless the gifts, through no fault of the party concerned, have perished.

"According to the provisions of the above-mentioned article, neither does engagement in the view of our legislator carry, like a marriage vow, any legal obligation, nor does it guarantee performance of the marriage, or bind the parties to any sort of commitment. Its only effect is that the party violating the undertaking, who, as expressed by the writer of the above law, 'without any sound reason' turns down the marriage settlement, should return the original or the cost of the gifts that they received from the other side. Now, the fact is that usually at the time of the engagement the two parties do not give each other things for the purposes of the marriage, but undergo considerably heavy outlay for the engagement itself . . ."

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* (*Zan-e rũz,* no.86, p.72).

As you see Mr. Mandavi's objection to this Article of the law is that "engagement" is not considered to carry legal obligation and be a guarantee of performance. The only result of engagement that has been acknowledged is that the party violating the engagement should return the gifts or their value to the party that presented them, whereas the main expenses which the individual must sustain in an engagement are other expenses, for example the expenses of the engagement celebrations, inviting guests and things connected with this.

I would add that another objection can also be made against this Article, and that is that the Article mentions that if 'without any reasonable cause' either of the parties breaks up the marriage agreement, the defaulting side should return the original articles it received as gifts from the other side or their cost. Whereas, as a rule, if one party turns down the marriage agreement 'on reason-able grounds' also, they should, on being asked by the other side, at least return the original articles presented as gifts by the other side.

As a matter of fact, none of these objections are relevant. Article No.1036 of the Civil Law contains the following : "If anyone of the engaged persons breaks up the intended marriage 'without reasonable grounds' and in case the other side, or the parents or other persons, were deceived into believing that the marriage would take place and incurred expenses, the side which turned down the marriage agreement must defray the expenses incurred by the other side, but such damages are restricted to the expenses that are customary."

This Article of Law has provided for all those eventualities that Mr. Mandavi thought the law did not anticipate. It is in this Article that the condition of 'without reasonable grounds' is stipulated. According to this Article, the defaulting party is responsible not only for the expenses of the other party but also for the expenses of the parents and others.

This Article, because the stress is on the word “deceived”, and this is suggestive of the basic intention of the Article, is commonly known as the rule of “deception”.

Besides that, in the Civil Law incitement is acknowledged to be a binding liability of the person who incites an act, and Article No.332, which concerns incitement, can be implemented to secure the defaulting parties in such cases.

So, the Civil Law not only did not overlook the losses sustained in connection with engagement (which according to the writer of the proposals are realized because of the engagement itself) , but it has incorporated it in two Articles.

Article No.1037 of the Civil Law states:

“In case of the intended marriage being broken up, the gifts which either side had given or the parents of the persons engaged had presented in anticipation of marriage may be demanded back by each side. If the original things do not exist, that side will be entitled to the value of the gifts which can normally be preserved, excepting the gifts that have perished through no fault of the other side.”

This Article concerns the gifts that both sides present to each other. As you notice, there is no condition in the Article to the effect that either of the parties should without reasonable grounds have broken up the intended marriage. The addition of the condition ‘without any reasonable grounds’ is a irrelevant presumption of Mr. Mandavi’s.

It is strange how a person who is incapable of comprehending the meaning of a few simple articles of the Civil Law (in spite of the fact that for years his occupation had been the study of these Articles, and that, as a specialist in the knowledge of these laws, he had been a burden on the budget of the country), can cherish the wish to change the revealed law which involves thousands of

considerations and fine points. It has also not been mentioned that up to five years ago, when Mr. Mandavi was busy with the compilation of the book *Paymãn-e muqaddas yã Mīthãq-e izdivãj* (The Sacrament or the Pact of Marriage), he had been reading the above sentence "without reasonable grounds" as "without any reason or motivation". In his book he put in an extensive chapter wherein he wrote, 'How on earth is it possible for something to take place without any reason or motivation?'. But eventually it was disclosed to him that for years he had been misreading that Article of the Law and erroneously taking it to mean what it did not, and he then admitted that the real reading was "without reasonable grounds".

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PART TWO

FIXED - TERM MARRIAGE

* **Contemporary life and fixed-term marriage**
* **Is it practical to live unmarried for a fixed period without engaging in any sexual activity?**
* **Monasticism for a fixed period, sexual communism, or fixed-term marriage?**
* **Modern youth cannot marry early, so what should they do about puberty and the onset of sexual activity?**
* **If fixed-term marriage were proposed by the West, advocates of modernity would consider it the most advanced form of marriage.**
* **Experimental marriage.**
* **Russell's view on fixed-term marriage.**
* **The traps which twentieth century men lay for women.**
* **Twentieth century woman's self-respect in the service of European and American capitalism.**
* **Which woman exploited?**
* **The Qur'ãn, the great protector and speaker of truth about women.**
* **Objections to fixed-term marriage and answers.**
* **Fixed-term marriage and the formation of the harem.**
* **Twentieth century man has beaten Hãrũn ar-Rashīd and Faḍl al-Barmaid in sexual gratification with women.**
* **Twentieth century man has no responsibility — just enormous expenses.**
* **The Libertine is condemned in Islam.**

FIXED-TERM MARRIAGE (1)

Unlike many persons, I am never made uncomfortable by doubts and misgivings in the problems of Islam, despite my attachment to and belief in it. Rather, in the depth of my heart I feel glad, because I believe and have experienced during my life that whenever and howsoever any aspect of this pure, divine code of life is assailed, it displays itself with more force, vigour, clarity and splendour.

The distinct feature of truth, of course, is that doubt and disbelief help to make it all the more vivid. Doubt precedes belief, and indecision is the source of investigation. *Zindah bīdãr** quotes from al-Ghazali's treatise *Mizanu 'l-'mãl:* " . . . The utility of our exhorations is only this much that you may begin to have misgivings about your time-ridden traditional conceptions, for

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* *Zindah bīdãr is* the translation by Badi'u 'z-Zamãn Furũzanfar of the book *Ḥayy ibn Yaqẓan* by Ibn Ṭufayl.

indecision is the basis of investigation and one who does not doubt is not reflecting on things in the right way. One who does not look in the right way does not see things well, and such a man lives in blindness and confusion.”

Let them speak, write, hold seminars and protest till, in spite of themselves, they will become a means of making clear the realities of Islamic teachings.

* * * *

One of the brilliant laws of Islam, according to the Ja’fari (Shi‘ite) school, which is the formally established sect in our country, is that marriage may take place in two ways: permanently or for a fixed period.

Permanent and fixed-term marriages are alike in some of their arrangements and different in certain others. One of the features that distinguish between them is, in the first instance, that in fixed-term marriage a woman and a man take a decision that they will undertake a marriage for a fixed period, and at the end of that period, if they are inclined to extend the period, they may extend it, and if they do not wish to do so, they may separate from each other.

The other feature is that they have more freedom in the settling of terms and conditions according to how they wish. For example, in a permanent marriage a man is responsible, whether he likes it or not, for daily expenses, clothing, dwelling and the other necessities of life, such as medicine and medical treatment, but in a fixed-term marriage, the couple is joined by the free contract that was agreed upon by them. It is possible that the man may not wish, or cannot afford, to bear these expenses, or that the woman does not wish to use the money of the man.

In a permanent marriage the wife, whether she likes it or not, must accept the man as the head of the household and carry out

what he says in the interest of the family situation, but in a fixed-term marriage everything depends upon the terms of the agreement they conclude between themselves.

In permanent marriage, the wife and the husband, whether they like it or not will have mutual rights of inheritance with each other, while in a fixed-term marriage this is not so. Thus, the real and essential difference between the fixed-term and the parmanent marriage is that the former, as far as limits and conditions are concerned, is “free”, that is, it depends upon choice and the contract between the two parties. The fact of the marriage being temporary gives to both parties a sort of liberty, because (with regard to the fixation of the duration of the agreement) they can exercise their opinion.

In the case of permanent marriage, neither of the two parties (without the consent of the other party) has a right to exercise restraint in having children or to practise birth-control, but in fixed-term marriage, the consent of the other party is not necessary. In fact, this is another sort of freedom that has been given to the couple.

The children born to the couple who have temporarily married are in no way different from the issue of a permanent marriage.

Mahr (dower) is also a pre-requisite in a permanent marriage as well as in a fixed-term marriage, with the difference that in a fixed-term marriage non-specification of the amount of the *mahr* nullifies the marriage, whereas in a permanent marriage the marriage itself is not nullified and an unspecified *mahr* can be arranged.

In permanent marriage, the mother and the daughter of the wife, and the father and son of the husband are forbidden (for marriage) and are *maḥram;* * it is similarly the case with the above

* Within the Islamic family, those who are not permitted to marry because of consanguinity, or, as in this case, proximity of relationship are termed ma/yam to each other (ed.).

relations in temporary (fixed-term) marriage. Besides, just as proposing marriage to a permanently married woman is prohibited, so is it also in the case of a fixed-term married woman; just as adultery with a permanently married woman makes her prohibited to the adulterer for ever, so also does it in the case of a temporarily married woman; just as a permanent wife has to observe a period of *'iddah* (during which she may not marry) after divorce, so a temporary wife also has to observe a period of *'iddah* after the termination of the agreed period of the marriage or its dissolution. There is this much difference, that the period of *'iddah* for a permanently married woman after divorce is (the time of) three periods of menstruation, while for a temporarily married woman it is (the time of) two periods of menstruation or forty-five days. In the case of a permanently married wife, a man can-not, while she is alive, marry her sister. In the case of a fixed-term marriage, also, two sisters cannot be married to the same person at one time.

These are some of the relevant principles of temporary or terminable marriage as mentioned in Shi'ite jurisprudence, and our Civil Law has observed them to the latter.

We, of course, uphold this law which has the above distinctive features. If our people have, in the name of this law, misused it and are still misusing it, the law itself is not at fault. If this law were nullified, the objectionable practices would not stop; only the form would be changed. Besides, there would be hundreds of evils that would result from the annulment of this law. We must not launch an attack on the spirit of the law, when we should be reforming and awakening man, simply because of man's lack of capability and fitness for reform, and then exonerate man and hold the law responsible.

Now, let us examine what necessity there is for a law in the name of fixed-term marriage, when there is already a law of permanent marriage? Is a fixed-term marriage, as the contributors to *Zan-e-rũz* have written, incompatible with the dignity of

a woman as a human being, and against the spirit of the Charter of Human Rights? Is not temporary marriage, if it ever was a necessity at all, a necessity of a bygone era? And is it not true that the contemporary life-style, the conditions and demands of present-day life, argue against it?

We shall examine this point under two headings :

a) Contemporary life and fixed-term marriage.

b) The defects and evils of fixed-term marriage.

Contemporary life and fixed-term marriage :

As we already know, permanent marriage creates a great deal of responsibilities and duties for the couple. This is why a boy and a girl in their early youth, when they enter the period in which natural puberty brings them under the pressures of the instincts, are not ready for a permanent marriage. The characteristic feature of our modern age is the lengthening of the span of time between natural puberty and social maturity, when one be-comes capable of establishing a family. If, in the simple old days, a boy at the beginning of his natural puberty could take up a vocation in which he could stay till the end of his life, this is no longer possible. A student who successfully passes through his education in primary school, secondary school and university without any interruption, and gets his school certificate and passes the university entrance examination, will graduate at the age of twenty-five. Surely it will then take three to four years to arrange things to get married permanently. The same applies in the case of an educated girl who has to pass through all the stages of study.

Modern youth, the time of puberty, and the onset of sexual activity :

If you ask a boy student of eighteen years of age whose sexual ardour is naturally at its height, to get married permanently, people would laugh at you. The same is the case with a

girl student of sixteen. It is not practically possible for this category of people to burden themselves at such an early age with the responsibilities of permanent marriage and commit themselves to a life with the many duties and obligations towards each other and also towards the children which they will have.

Monasticism for a fixed period, sexual communism, or fixed-term marriage :

I ask you how, in these circumstances, with these natural instincts, should we behave? Is nature prepared to delay the ad-vent of puberty till we complete our education, and bring our sexual instinct to a stand still, because our modern way of life does not permit us to marry at sixteen or seventeen years of age?

Are the young ready to undergo a period of temporary asceticism and put themselves under the strain of rigid austerity till such time as there may arise an occasion for permanent marriage? Suppose a young person is prepared to undergo temporary asceticism, will nature be ready to forego the formation of the dreadful and dangerous psychological penalties which are found in the wake of abstention from instinctive sexual activity and which psychiatrists are now discovering?

There remain two alternatives only. We may leave the young to themselves and ignore what they do. We may allow a boy to have unlawful sexual relations with hundreds of girls, and allow a girl to have unlawful relations with tens of boys and have so many abortions. In other words, in practice, we accept sexual communism, and because we have given liberty to the young man and young woman equally, we have satisfied the spirit of the Charter of Human Rights. We say this, because, according to so many per-sons lacking foresight, the spirit of the Charter of Human Rights is that if a woman and a man are to leap into the valley of Gahanna, they should leap together, hand in hand, should to shoulder.

Can such young men and women, who have had sexual relations with a large and unlimited number during their student life,

turn out to be true men of life and women of the family when they become permanently married?

The other course is fixed-term free marriage. Fixed-term marriage puts the limit on a woman that she must not be the wife of two men at the same time. Evidently such a restriction upon the woman itself necessitates a restriction upon the man. When every woman has exclusive attachment to a particular man, every man will necessarily be attached to a particular woman, excepting in cases in which the number on one side may be more.* With this arrangement a young man and woman may live through the time of their education without falling back upon temporary asceticism and enduring its penalties, and without falling into the abyss of sexual communism.

Experimental marriage :

The occasion for such marriage is not confined to the period of study. It may arise in other circumstances too. In principle it is possible that a man and a woman who want to marry permanently, but have not had the opportunity to get to know each other well enough, may marry temporarily for a specified period as an experiment. If they are fully confident and satisfied with each other, they may give permanence to this marriage, otherwise they can separate.

I ask you why Europeans think it necessary and unavoidable to maintain a number of prostitutes in a specified area in every town under the control and observation of the state? Is there any other reason except to make sure that the number of bachelors who cannot afford to marry permanently do not become a great danger for families.**

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* i.e., polygyny. See part xi. (ed.)

** The practice of having a state-run brothel was an early twentieth-century Western import into Iran. Such establishments were actively encouraged during the reign of the Pahlavis, and could be found in most large towns in Iran. (ed.)

Russell's views on fixed-term marriage :

Betrand Russell, the well-known British philosopher in his book *Marriage and Morals* writes: "So long as the virtue of respectable women is regarded as a matter of great importance, the institution of marriage has to be supplemented by another institution which may really be regarded as a part of it — I mean the institution of prostitution. Everybody is familiar with the famous passage in which Lecky speaks of prostitutes as safeguards of the sanctity of the home and of the innocence of our wives and daughters. The sentiment is Victorian, and the manner of expression is old-fashioned, but the fact is undeniable. Moralists have denounced Lecky because his remark made them feel furious and they did not quite know why, but they have not succeeded in showing that what he said was untrue. The moralist asserts, of course quite truly, that if men followed his teaching there would be no prostitution, but he knows quite well that they will not follow it, so that the consideration of what would happen if they did is quite irrelevant." (p.97)

This is a Western formula for finding a remedy against the danger to men and women who cannot afford to marry permanently, and previously we saw the formula which Islam has put forward. If this Western formula be accepted and put into practice and a group of unlucky women are specifically allocated for fulfilment of this "social duty", will woman then rise to her real position and be given human respect, and will the spirit of the Declaration of Human Rights be satisfied?

Bertrand Russell has written a full chapter on the subject of experimental marriage in his book *Marriage and Morals.* Ile says:

"Judge Ben B. Lindsey, who was for many years in charge of the juvenile court at Denver, and in that position had unrivalled opportunities for ascertaining the facts, proposed a new institution which he calls 'companionate marriage'. Unfortunately he has lost his official position, for when it became known that he used it rather to promote the happiness of the young than to give them

a consciousness of sin, the Klu Klux Klan and the Catholics combined to oust him. Companionate marriage is the proposal of a wise conservative. It is an attempt to introduce some stability into the sexual relations of the young, in place of the present promiscuity. He points out the obvious fact that what prevents the young from marrying is lack of money, and that money is required in marriage partly on account of children, but partly also because it is not the thing for the wife to earn her own living. His view is that young people should be able to enter upon a new kind of marriage, distinguished from ordinary marriage by three characteristics. First, there should be for the time being no intention of having children, and that accordingly the best available birth-control information should be given to the young couple. Second, that so long as there are no children and the wife is not pregnant, divorce should be possible by mutual consent. And third, that in the event of divorce, the wife should not be entitled to alimony. He holds, and I think rightly, that if such an institution were established by law, a very great many young people, for example students at university, would enter upon comparatively permanent partnerships, involving a common life, and free from the Dionysiac characteristics of their present sex relations. He brings evidence to bear that young students who are married do better work than such as are unmarried. It is indeed obvious that work and sex are more easily combined in a quasi-permanent relation than in the scramble and excitement of parties and alcoholic stimulation. There is no reason under the sun why it should be more expensive for two young people to live together than to live separately, and therefore the economic reasons which at pre-sent lead to postponement of marriage would no longer operate. I have not the faintest doubt that Judge Lindsey's plan, if embodied in the law, would have a very beneficial influence, and that this influence would be such as all might agree to be a gain from the moral point of view." *(ibid.* pp.107 — 109)

That which Judge Lindsey and Russell call 'companionate marriage ', though it is a little different from temporary Islamic

marriage, clearly shows that thinkers like them have gone to the root of the problem and are satisfied on the point that the usual permanent marriage is not by itself sufficient for social requirements.

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FIXED-TERM MARRIAGE (2)

The particulars of the law of fixed-term marriage, the necessity of such law, and the insufficiency of permanent marriage in meeting human needs, especially in the present age, have formed the subject matter of our study. Now, we want to present, as it were, the other side of the coin. We shall see what damage it may possibly do away with. By way of introduction I shall give a short history of the writer's beliefs.

Among all the subjects, problems, topics and matters of discourse, that have existed and do exist now for man, no subject or field of discourse in anywhere near as complex and garbled as the history of human sciences, beliefs, customs, traditions and manners. And this is the reason why man has talked more non-sense on these subjects than on any other topic and it is on these subjects, more than on any other, that he has an inordinate desire to express his views.

For example, anyone who is in touch with Islamic philosophy, gnosis, Sufism and theology, and is acquainted with some modem writings, which are mostly extracts or the original writings of foreigners, will follow what I mean. It is something like this. To express their point of view on this kind of topic, the orientalists, their admirers and camp followers, consider every thing necessary except that they themselves should have a thorough grasp and comprehension of the problem.

For example, around the subject that is known in Islamic gnosis as *waḥdatu ‘l-wujũd* (the unity of existence), is there anything that has not been said ! Only one thing is missing and that is what exactly *waḥdatu ‘l-wujũd is,* and what conception the giants of gnosis like Muḥyi ‘d-Din ibn al-Arabi and Mulla Ṣadra had of *waḥdatu ‘l-wujũd.*

As I read a few of the articles with some of the ideas pertaining to fixed-term marriage in certain issues of *Zan-e rũz,* I could not help remembering *waḥdatu’l-wujũd.* I saw that all sorts of things had been discussed except that thing which is the spirit and the purpose of this law and the intent of the legislator.

Of course, since this law is part of the “heritage of the East”, it is being received rather coldly. If it were a souvenir of the West, it would have been otherwise.

Certainly, if this law were imported from the Western part of the globe, there would have been conferences and seminars on how the restriction of marriage to permanent marriage does not suit the second half of the twentieth century; how the present generation cannot be confined to the restrictions of permanent marriage; how the present generation wants to be free and live freely, and will not accept anything but free marriage in which they individually choose all the restrictions and limitations.

For this reason, now that this call is raised from the west and someone like Bertrand Russell proposes the subject of companionate marriage, it can be safely predicted that, to a greater extent than Islam wants, this idea will be welcomed and permanent marriage will be forsaken altogether, and we will be compelled in future to defend, and propagate in favour of, permanent marriage.

Objections and Difficulties :

The defects and harm that have been mentioned in connection with fixed-term marriage are as follows:

1. Marriage should rest on a stable foundation. A couple, when they are first joined by the pact of marriage, should consider themselves attached to each other for ever, and the idea of separation should not enter their minds. So a fixed-term marriage cannot be a stable pact for the couple.

That the foundation of marriage should be stable is quite right, but this objection arises when we replace permanent marriage by fixed-term marriage and wish to annul permanent marriage.

No doubt, when both parties have the means for permanent marriage, and have full and satisfactory information regarding each other, and have full trust in each other, they may very well bind themselves in the pact of marriage for ever.

Fixed-term marriage has been allowed in the *sharī'ah* only because permanent marriage, by itself, could not cope with human needs in all conditions and circumstances, and dependence entirely upon permanent marriage would unavoidably create a situation in which people would either be advised temporary asceticism or would be left to be drowned in the depths of sexual communism. It is quite clear that any young man and woman who had found all the desired prerequisites for a permanent marriage would not be greatly enthusiastic about a temporary alliance.

2. The women and girls of Iran who subscribe to the Shi'ite faith have not welcomed fixed-term marriage and have considered it rather as an insult to them. Thus, the general opinion of the Shi'ahs has rejected it.

Our reply is firstly that the dislike of *mut'ah* (fixed-term marriage) is due to the misuse made of it by sensual persons. The law should apprehend such persons, and we shall discuss shortly this point of misuse. Secondly, the wish that fixed-term marriage should be welcomed like permanent marriage is misplaced and wrong, because the philosophy of fixed-term marriage is based upon the non-availability of means, and the inability of both the parties, or one' of them, to become permanently married.

3. Temporary marriage is detrimental to the position and honour of a woman because it is, so to say, the hiring of a human being. It is a religious licence for the sake of human nature. It is against the dignity of a woman to give herself to a man in return for the remuneration she gets from him.

This is the most amazing objection of all. Firstly, in view of the distinctive features that we have already related in the previous section, what does it have to do with hire and a fee? Is the time limit in this marriage the cause of its being excluded from the definition of marriage and acquiring for itself a form in which 'fee' and 'hire' are appropriate terms? And is it only because it is explicitly ordained that the *mahr* (dower) must be 'fixed' and 'definite', that this *mahr is* being depicted as the rental charge? We ask whether, if there were no dower and the man did not place anything before the woman, she would then regain her human dignity? We shall discuss separately the subject of *mahr* (dower).

Incidentally, Islamic jurists have made clear, and the Civil Law has, on the same basis, been so arranged and brought together into sections, that temporary and permanent marriages, from the point of view of the substance of their stipulations, have absolutely no difference between them, and should not have. Each one of them is a marriage, and each one takes place with the recital of a specific formula. If the fixed-term marriage is set up with the recital of those terms that are specially intended for remuneration or fee, the marriage is void.

Secondly, we ask, how long and from which date has the renting of man been abolished? All tailors, barbers, doctors, artesian, all civil servants, from the Prime Minister to the lowest worker in a factory, are hired men.

The woman who has entered into the alliance of a fixed-term marriage with a particular man, out of her free will and of her own choice, is not a rented person and she has not acted against the

honour and status of a human being. If you want to see a rented woman and wish to witness the slavery of woman, you should travel to Europe and America and call in on the film companies so that you may understand what a rented woman is. See how these companies put up the actions of women for sale, their poses, manners and sexual charms. The tickets that you purchase for cinemas and theatres are, as a matter of fact, a payment towards the rental value of the rented woman. You may see there to what use the unfortunate woman presents her body for the sake of money. For a long time, under the directions of 'honourable', experienced specialists, she has learnt the secrets of sex-appeal. She puts her body, soul and personality at the mercy of a financial organization to get more sales for that organization.

Visit the cabarets and hotels and see what honours woman has attained. For a paltry sum as her wage, she puts all her honour and prestige in the hands of the guests, so that she can contribute to filling the already full pockets of certain rich men.

Women on hire are those models who are wage-earners and hired workers for the big sales-stores and who give up their honour and prestige to satisfy their employers' avarice and greed.

Women on hire are those women who appear on the television screen with all sorts of beautification, most of which are unnatural, to attract buyers for some commercial firm, to popularize some commercial commodity. But her basic aim is her wage.

Who does not realize that in western countries today the gracefulness of a woman, her sex-appeal, her voice, the art and originality of a woman, the soul and body of a woman, and in the end, the whole personality of a woman is at the beck and call of American and European capitalists. It is so sad that you, knowingly, or unknowingly, drag the gentle and honourable women of Iran to such a servile position. I am unable to understand why if a woman marries a particular man on liberal terms temporarily, she is to be considered a rented woman, but if a woman at some

wedding party or at a cabaret, before the greedy gaze of thousands of men, ruins her larynx for the satisfaction of their sexual inclinations and turns a thousand and one manners of somersault so that she may get the promised money, is not to be counted a hired woman.

Has Islam, which has restrained men from exploiting women like this, and has forbidden woman from such servility and submission and earning her livelihood in this way degraded women, or has the Europe of the later half of the twentieth century?

If, some day, woman fully understands this and is enlightened and notices the traps that twentieth century man has set in her path and concealed from her, she will rise in revolt against this fraud. That will be the time when she finds out that her only protector in all sincerity is the Qur'ãn. Of course, that day is not far off.

The magazine *Zan-e rũz,* in its issue No.87 on page 8, has published a report of a woman named Marḍiyyah and a man named Riḍã under the heading "A Hired Woman", and has given an account of the misfortune of the unfortunate woman.

The story, according to the statements of Riḍã, begins with the approach of the woman with the proposal of marriage. It means that the formula of the forty proposals was acted upon for the first time, and a woman went forth with a request for marriage. It is quite evident that a story which starts with the proposal of a woman for marriage could not end any better than it did.

On the other hand, according to the statements of Marḍiyyah, the man, sensual and cruel as he was, pretending that he would take her as his permanently married wife and would take care of her and her children, deceived her. Furthermore, without the consent and approval of the woman, with the excuse of having entered into a fixed-term marriage with her, after gratifying his passion he abandoned her.

If these statements are true, the marriage was void. The man was cruel and the woman was ignorant of the religious and the statute law. They violated the law and should be punished.

Before people like Riḍã are punished, they should be instructed and Marḍiyyah should be warned.

How can the law, as it is, be assailed for an offence the root cause of which is the cruelty of men and the ignorance and forgetfulness of women. The *Zan-e rũz* magazine supports the cause of Riḍã, and thus lashes out with its sword against the law. If there were no law of fixed-term marriage, would the cruel man, Riḍã, and the neglectful and ignorant woman, Marḍiyyah, have lived peacefully and comfortably?

Why do you shirk the responsibility of instructing and warning men and women, and why do you keep the rights and duties of man and woman secret from them? Why should you take advantage of a poor woman's ignorance and misrepresent the law which is her only protector and guardian as her enemy, and wish that she should destroy her only refuge with her own hands.

4. Fixed-term marriage is some sort of licence for polygamy, and polygamy is prohibited by law. So temporary marriage is also prohibited by law.

As regards the question of the category of persons for whom fixed-term marriage is allowed by the *sharī'ah,* and the question of polygyny, we shall discuss these fully at a later stage.

5. Fixed-term marriage, because it has no permanence, is an unsuitable arrangement for children born of this alliance. The inevitable result of a fixed-term marriage is that the children born will be without a guardian and will remain deprived of kind paternal and loving maternal protection and will remain deprived of a home.

This is the objection on which *Zan-e rũz* magazine lays much stress, but after the explanation that we have made, we do not think there can be any occasion left for argument or dispute. In the preceding section we mentioned that one of the differences between fixed-term marriages and permanent marriages is to do with having children.

In permanent marriage neither one of the couple is permitted, without the consent of the other, to avoid the responsibility of the birth of a child, whereas in fixed-term marriage both sides are free. In fixed-term marriage the woman cannot refuse sexual intercourse with the man, but she has the option that, without causing interruption during coition, which is harmful for the man, she may avoid pregnancy. The problems of contraception have already been fully solved.

If, on the other hand, in temporary marriage, the couple wishes to have a child, and accept the responsibility of bringing up and looking after the child, they may have children. As far as natural affection is concerned there is no difference between the children of a permanently married wife and a temporarily married wife. Suppose the father or the mother refuses to perform his or her duties, the law will then declare it their obligation and will oblige them; just as in the case of divorce, the law should take action and should safeguard the rights of the children. If they do not wish to have children, and their only aim is to satisfy their sexual instincts, they should take steps to refrain from having children.

As far as we know, the church forbids birth control, but according to Islam, if the husband and wife prevent the birth of a child at its point of conception it is permissible. When the pregnancy has already begun, Islam in no case allows abortion. When the Shi‘ite jurists say that the aim of permanent marriage is to have children, and the aim of temporary marriage is gratification and satisfaction of the sexual instincts, they mean the same thing.

Criticisms:

The writer of the forty proposals has, in issue No.87 of *Zan-e rũz,* contributed an article criticizing fixed-term marriage.

He firstly says that "the subject of temporary marriage is so distasteful that even the writers of the law of marriage (in the civil code) could not manage to comment and give details of this law, as if they loathed their own work, and only as an outward compliance, according to Articles 1075, 1076 and 1077, stuck some words and phrases together and then passed on.

"The composers of the law relating to temporary marriage (*mut'ah*) disliked their business so much, that they did not even define the above mentioned marriage formally and did not explain its terms and . conditions . . ."

Afterwards the learned writer himself makes amends for this defect in the Civil Law and says: "The above mentioned marriage means that an unmarried woman, in proportion to a certain settled fee and remuneration, for a limited and specified period, a few hours or a few minutes, gives herself into the hand of a man for the satisfaction of his passions, and for the gratification of his lust and the performance of sexual acts."

He further says, "For the proposal and acceptance of the said marriage, special words are quoted from the Shi'ite books of jurisprudence in Arabic, to which the Civil Law does not refer and does not care to mention, as if in the eyes of the legislator, it can be realized by the use of any words, Arabic or not, which need only signify the said purpose (that is, the sense of acceptance of remuneration and a fee)."

According to the learned writer.

a) The Civil Law does not define and does not explain its terms.

b) The essence of temporary marriage is that a woman, in return for a fixed renumeration, gives herself to a man.

c) In view of the Civil Law, any word that signifies the sense of the woman being rented is sufficient to connote the proposal and acceptance of temporary marriage.

I invite the learned writer to study the Civil Law once again, and to study it carefully, and I likewise request the readers of *Zan-e rũz* somehow to get a copy of the Civil Law and carefully study the following parts.

In the Civil Law, the sixth chapter of the volume on marriage is given over to fixed-term marriage, and it consists of not more than three simple sentences. The first is that temporary marriage is of fixed duration, as it is to be concluded for a specified period. The second is that the period of temporary marriage should be specifically agreed upon. Thirdly, that the law in respect of *mahr* and succession is the same as mentioned in the chapters pertaining to dower and succession.

The respected writer of the forty proposals is under the impression that whatever is mentioned in the five chapters of the volume on marriage is all in respect of permanent marriage, and that only these three sections deal with fixed-term marriage. He is unaware of the fact that all the sections of the five chapters, excepting where it is otherwise specified, as in section 1069, or the section about divorce, are all common to permanent and temporary marriage. For example, section 1062, which mentions that "marriage takes place with an offer and acceptance in words which unequivocally denote the intention of marriage", is not only meant for permanent marriage. It applies to both kinds of marriages. The conditions that the Civil Law lays down concerning the person who concludes the marriage, or the conclusion of the marriage, or the husband and wife, all apply to both kinds of marriage. The Civil Law did not define temporary marriage be-cause there is no need to define it, just as it does not define permanent marriage and considers it too well-known to require a definition. The Civil Law

has considered every word that clearly denotes marriage or the taking place of marriage sufficient for the conclusion of marriage, whether it is a permanent or a fixed-term marriage. If, on the other hand, any word conveys a meaning inconsistent with the meaning of marriage, such as ‘renumeration’, ‘gratification’, ‘lease’ and ‘rent’, it is not effective for the proper conclusion of a marriage, either permanent or temporary.

On the strength of what has been written, I pledge my word that if a number of learned judges and those who fully understand the law, who are most numerous in the Ministry of Justice, decide that the objection against the Civil Law that has been discussed above is justified, I shall refrain from criticism of any of the articles in Zan- e rũz.

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FIXED-TERM MARRIAGE AND THE PROBLEM OF THE HAREM

One of the subjects through which Occidentals very often attack the Oriental and ridicule him, having made and still making films and writing plays on the topic, is the matter of harems, of which the east has had the misfortune to provide more examples.

The life of some of the caliphs and sultans of the eastern countries is reckoned to be the peak of indulgence in this matter, and the keeping of a harem is presented as the fullest and the most complete manifestation of the sensuality and voluptuousness of the man of the east.

It is said that accepting the permissibility of fixed-term marriage is tantamount to conceding the maintenance of a harem, which is a weakness and a source of shame for the east before the west. It is as good as licensing sensuality, and licentiousness, which can take any form and assume any shape, is against morality, and is the means and cause of downfall and ruin.

Now, in fact, the same thing has been said in respect of polygyny. The permissibility of polygyny is seen as permission to maintain a harem.

We shall discuss the question of polygyny separately. At present, we shall particularly confine ourselves to the question of fixed-term marriage.

This problem must be studied and tackled from two points of view. First, to see which factor it was that, from the aspect of its social nature, brought about the formation of harems, and whether the law of fixed-term marriage led to the formation of harems in the east.

Second, whether the object of making fixed-term marriage religiously permissible was, in a way, to legalise licentiousness and the keeping of a harem for a certain social class.

Social causes for harems:

Firstly, the creation of harems was due to two factors, operating together.

The first and principle factor that brought about the creation of the harem was the virtue and chastity of woman. That is to say that the conditions of morality and the social environment were such that women did not have licence to have sexual intimacy with any other man when she already had such relations with a particular man. In these conditions, a wealthy, sensuous and lustful man saw no other antidote than to collect a group of women around him and establish a harem.

Obviously, if moral and social conditions had not counted chastity and purity as necessary for women, and if women could have gratuitously and easily given themselves to any man, and every man could have indulged his desires with any woman at any time, if the means of sexual gratification had been available everywhere, at every time, under every kind of condition, this kind of man would not have given himself the trouble to establish a large harem at great expense.

The other factor was the absence of social justice. When there is altogether no social justice and one person drowns in a sea of riches, while another is stuck in a boat, a boat of poverty, want and misfortune, while a vast number of men are denied the possibility

of establishing a family and having a marriage partner, in such social conditions the number of unmarried women exceeds the number of men and this paves the way for the establishment of harems.

If there is social justice and there are means for everybody to establish a family and choose a marriage partner, naturally every woman will be found associated with a particular man and the circumstances favourable to promiscuous and lascivious behaviour and the keeping of a harem will not obtain.

Anyway, it is inconceivable that the number of women could be so much in excess that when all men of age are settled in marriage there may even then remain a chance to keep a harem for every man who had the ways and means.

It is the habit of historians to relate the intrigues of the harems and courts of the caliphs and sultans and to narrate with lurid details their luxurious and pleasure-seeking activities, but they remain silent when it comes to referring to the deprivations, and never explain and describe the humiliations, failures and mortifications of those who were buried alive under the walls of the forts of the caliphs and sultans. Social conditions did not allow them to choose someone in marriage, while tens and hundreds of women out of those detained in harems remained deprived of some of their basic instinctive needs and lived as virgins till the ends of their lives.

Certainly, if society were under the rule of an infallibly just and unerringly virtuous ruler, chastity would have been deemed an essential requisite for a woman and sexual satisfaction would have been impossible except within the frame- work of a marriage (permanent or temporary) ; economic and social inequality, too, would have been done away with, and for all persons of age the possibility of satisfying the most natural and instinctive human right of having a partner would have been attained, and the setting up of harems would have been an impossibility and an absurdity.

Even a merely cursory look at history is enough to show us that in the formation and establishment of harems fixed-term marriage has not been in the least instrumental. Of the Abbãsid caliphs or the Ottoman sultans, the most notorious figures of all times, none subscribed to Shi‘ism.* None of them can be said to have taken advantage of it.

The Shi‘ite kings, despite the fact that they could have used it as an excuse, never reached the degree of the ‘Abbãsid caliphs and Ottoman sultans. This alone, shows that there were other special social problems which were at the root of this matter.

Is the provision of fixed-term marriage a licence for promiscuity?

In everything, there is some cause for doubt, but it is beyond all reasonable doubt that revealed religions take a stand against promiscuity and licentiousness. It is for this reason that, for the followers of most religions, the effacing of desires that lead to promiscuity and licentiousness is taken to be the purpose of practising strict self-discipline.

One of the clear and admitted principles of Islam is to struggle against promiscuity. The noble Qur’ãn has placed promiscuity on a level with idolatry. In Islam a man who has an inordinate desire for women, that is, a man who aspires to have all sorts of women, to experience them, is declared to be a man cursed and condemned by Allãh. When we discuss the subject of divorce, we shall quote the text of the Islamic commandments on this matter.

The distinction of Islamic commandments as compared with the laws of many other religions is that Islam does not permit asceticism and the mortification of natural and instinctive physical needs, but neither does it allow promiscuity. According to Islam, all instincts, sexual or other, should be satisfied with-in the limits of necessity and experience. Islam, however, never

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* See below p.51

allows a person to raise the heat of his instinctive passions into a state of insatiable thirst. So if anything takes to itself a tinge of promiscuity, cruelty or injustice, it is enough to condemn it as against the spirit of Islam.

It is, however, irrefutable that the motive of the Law-giver was never to make fixed-term marriage a source of promiscuity, a reason for the establishment of the harem by lascivious persons, and a means of misfortune and homelessness for women and scores of children.

The forceful encouragement and exhortation of the leaders of Islam to fixed-term marriage has a special philosophy which we shall explain shortly.

Harems in the present world:

Now let us see what the world of today has done about the setting up of harems. The world of today has abolished the custom of harems. The world of today considers the maintenance of harems disagreeable and has eliminated the factor which brought them into existence. Now the question is which factor? Is it social inequality that has been eliminated, and as a result all young persons have the chance to marry, and thus the main cause of the existence establishment of harems has been abolished?

No, it has done something else. It has campaigned against the foremost factor, the chastity and virtue of women, and has thus done the greatest service to the male sex. The virtue and chastity of a woman in so far as it enhances her worth and makes her dear and precious, is considered an obstacle for man.

Today's world has done one thing which has relieved the sensuous man of this age from the necessity of maintaining a harem with all the expenses and trouble that involves. For a man of today, through the blessings of western civilization, there is a harem everywhere. A man of today does not consider it necessary

to have financial resources like Harũn ar-Rashīd and Faḍl ibn Yaḥyã al-Barmaki, so that he may enjoy any variety of women in all the various ways and styles.

To keep a motor-car, and to have an income of two to three thousand tumans is sufficient for a modern man to facilitate his sensual pleasure to an extent that even Harũn ar-Rashīd did not dream of. Hotels, restaurants and cafeterias are advertised as being equipped already with all facilities in place of a harem for the modern man.

A young man like ‘Ãdil Kũtũwãli gives in this century detailed, vivid descriptions, and claims to have kept twenty-two lovers with different characteristics, and of different appearances at one time. What is better than that for a modern man? Modern man, through the blessings of Western civilization, does not miss anything of the harem except its enormous expense, trouble and inconvenience.

If the hero of ‘A Thousand and One Nights’ were to raise his head from underneath the ground and see the possibilities of all sorts of amusement and frivolities, and the cheapness of women today, he would never dream of having to establish a harem with all its expenses and disadvantages. He would thank the west for having saved him all the trouble of maintaining a harem. He would forthwith proclaim that polygyny and fixed-term marriage were all hereby annulled, because these laws create responsibilities and liabilities for men as much as they do for women.

In this battle of the sexes, both in the past and in the pre-sent, we know which sex is the winner. Unfortunately we must say that the looser, both in the past and in the present, is that trusting and open-hearted creature we call the female.

Prohibition by the Caliph of fixed-term marriage :

Fixed-term marriage is one of the distinctive features of Shi‘ite jurisprudence. No other school of Islamic jurisprudence

allows it. I never like to enter into the controversies between the Shi‘ahs and the Sunnis, so I shall only briefly refer to a part of the history of this problem.

All Muslims unanimously believe, and have consensus of opinion, upon the fact that in the first period of Islam, fixed-term marriage was permissible, and the Holy Prophet, during one of his journeys, when the Muslims were away from their wives and passing their time in much discomfort, gave them permission for fixed-term marriage. It is likewise agreed amongst the Muslims that the second Caliph, during the period of his caliphate, prohibited fixed-term marriage. The second Caliph, in his well-known and oft-repeated words said, "There were two things that were permissible in the days of the Prophet which I do hereby prohibit today, and I shall punish anyone who practises them: the *mut‘ah* of women and *mut‘ah* of ḥajj."

A section of Sunni Muslims believe that the Prophet himself, at a later stage of his life, prohibited fixed-term marriage and the Caliph's prohibition was actually the commandment of the prohibition of the Prophet carried out by the Caliph in his stead. But as we know, in fact, the actual words of the Caliph are against this interpretation.

The correct interpretation of it is what the great scholar Allãmah Kãshif al-Ghiṭã'* took it to mean. He said that the Caliph assumed the authority of annulling *mut‘ah* under the impression that the matter of *mut‘ah* was also included in the subjects which were within the realm of his authoritative control as the ruler and guardian of the affairs of the Muslims. Every ruler and delegate of power may, under his own authority, and deeming it appropriate according to the exigencies of the times and circumstances, make such changes.

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* Shaykh Muhammad Ḥusayn ibn Shaykh Ali Kãshif al-Ghiṭa', 1294/1877 — 1373/1954), one of the most renowned of the religious scholars of an-Najaf al-Ashraf (Iraq).

In other words the prohibition of the Caliph was a political or an administrative prohibition, and not a religious or a legal prohibition. According to what history tells us, the Caliph made no secret during his reign of his campaign against the Companions becoming dispersed and settling in newly conquered parts of the Muslim State and intermixing with communities who were newly converted to Islam. He was against their scattering beyond Medina as long as he lived. He was of the opinion that they should not enter into blood relationships with the newly converted Muslims before these had had a deep Islamic education. He thought untimely intermingling with them would be dangerous for the coming generation. It is evident that it was not more than a temporary reason. The fact that the Muslims accepted this prohibition of the Caliph without a protest also shows that they considered the ordinance of the Caliph to be based upon political and temporal reasons, for, otherwise, it would not be possible for a ruling Caliph to say that the Prophet had prescribed one rule and that he pre-scribed another rule, and for them to accept it without a murmur.

However, long afterwards, due to certain incidents and circumstances, the *sīrah* (way of life) of the previous Caliphs, especially of the first two, was accepted as a permanent model programme of life. This fanatical bias was extended to such lengths that it acquired the authority of the original law of Islam. So, the charge against our Sunni brothers is more justified than it is against the Caliph himself. Because the Caliph issued a temporary prohibition ordinance, based on political exigencies (as with the prohibition of tobacco within our own times) * in respect of fixed-

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* The granting of an exclusive tobacco monopoly to a private British company by Nãṣiru'd-Dīn Shãh in 1890 in exchange for handsome bribes but no payment resulted in a successful protest movement (1891 -1892). Instrumental in this was the *fatwã* issued by the then leading Shi'ite *mujtahid* Mīrzã Muhammad Ḥasan Shīrãzī prohibiting the smoking of tobacco. This protest movement was a fore-runner of the later Iranian Constitutional Revolution (1905-1911).

term marriage, others should not have assigned to it a permanent character.

Obviously when ‘Allãmah Kãshif al-Ghiṭã’ presented the above view, he did not deal with the question as to how far this interference of the Caliph was justified, and also as to whether the law of fixed-term marriage is or is not within the category of such things in which the ruling authority has a right to interfere and proclaim prohibitory orders, however temporarily. He simply traced the historical stages as to how and in what name and in what manner the prohibition began and saw whether it was because of that reason alone that the Muslims as a whole did not react and did not protest against the prohibitory order.

However, the influence and personality of the Caliph, the bias of the people in following his way of life, and his policy of administration, were the cause of relegating this law to the shadows of neglect and oblivion. This *sunnah* of the Prophet, that is, fixed-term marriage, which is complimentary to permanent marriage and does away with hardships, has been forsaken for ever.

This was the situation when the holy Imãms, who are the guardians of the faith, greatly encouraged and persuaded people to remember it, so that this Islamic *sunnah* might not be forgot-ten and abandoned. Imãm Ja‘far al-Ṣãdiq (a.s.) said, “One of the matters about which I shall never keep precautionary silence *(taqiyyah) is* the matter of *mut‘ah.*”

Thus it was that a secondary cause, in addition to the first cause of temporary marriage being permissible, was added. This was an effort to revive the *sunnah* of the Prophet. In my opinion, when the holy Imãms forbade already married persons to enter in-to a fixed-term marriage, it was on account of the first cause of this law. They wanted to say that the law was not in the interest of people who did not need it. Just as Imãm Mũsã al-Kãẓim (a. s.) said to ‘Ali ibn Yaqṭīn, “What have you to do with fixed-term

marriage, when Allãh has made you able to do without it" and to another person he said, "This thing is permissible for a man whom Allãh has not made independent of it, but any person who is already married can have recourse to it only when he cannot reach his wife".

Where the holy Imãms encouraged and persuaded people generally, it was due to the relative, secondary cause; namely, so as to revive the *sunnah* of the Holy Prophet which had been wrongly forsaken. In such circumstances it was necessary to make the people as a whole to know and understand the real position of the *sharī'ah.* Encouragement of only those who were actually in need of it was not sufficient. This can be clearly deduced from the Shi'ite traditions and narrative sources.

It is, anyhow, clear that the intent and purpose of the first law-giver, in the explanation and commentary of this law, and the purpose and aim of the holy Imãms in encouraging and persuading people to act according to it, was never meant to make it a source of promiscuity and licentiousness and a reason for keeping a harem by cruel persons, or a source of helplessness for a number of forsaken women and of creating children without guardians,

A tradition from 'Ali (ibn Abī Ṭãlib):

Mr. Mandavi, the writer of the forty proposals, writes in issue No.87 of *Zan-e rũz:*

"In the book *al-Aḥwãl ash-shakhṣiyyah* (Personal Statutes), compiled by Shaykh Muhammad Abu Zahrah* it is quoted from Amīr al-mu'minīn that:

* A contemporary Egyptian religious scholar.

لَا اَعْلَمُ اَحَداً تَمَتَّعَ وَهُوَ مُحْصِنٌ اِلاَّ رَجَمْتُهُ بِالْحِجَارَةِ

"(Mr. Mandavi has translated it thus) : 'Whenever I come to know that a person 'not worthy of it' has concluded *a mut'ah* marriage, I shall penalize him for adultery, and sentence him to be put to death by stoning.' "

Firstly, if we seriously intend to follow the sayings of Amīr al-mu'minīn faithfully, why should we avoid all those narrations which are recorded in Shi'ite and non-Shi'ite sources in respect of *mut'ah,* and cling to this one narrative quoted by a Sunni writer who did not even mention his source.

One of the very valuable sayings of 'Ali (a. s.) is the following: "If 'Umar (ibn al-Khaṭṭãb) had not proceeded in taking such an initiative, and had not prohibited *mut'ah,* no-one, excepting those who were of a perverted nature, would have committed adultery."

In other words, if temporary marriages had not been prohibited, nobody would have been compelled to commit adultery for the satisfaction of his instinctual drives. Only those who always relish and prefer an unlawful act to a lawful one would have committed such an act.

Secondly, the meaning of the above expression is "when-ever I come to know that a man *who is permanently married* has concluded *a mut'ah* marriage I shall sentence him to be stoned to death."

I do not know why Mr. Mandavi has translated the word *muhsin* which means a permanently married man as "not worthy of it".

Moreover, the purport of the narration is that permanently married men have no right to marry temporarily. If the intention

had been that nobody had the right, the condition “who is permanently married” would have been redundant. So, this narration, if at all reliable, supports the view which can be expressed thus :

“Legal permission for *mut‘ah* has been provided by the *sharī’ah* for those who are in need of a wife, that is, bachelors or those whose wives are not with them.”

So, the narration supports its being permissible, and not its prohibition.

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PART THREE

WOMAN AND HER SOCIAL INDEPENDENCE

* **Marrying a woman before she is born.**
* **Exchange of daughters.**
* **When ‘Ali (a.s.) came and requested from the Holy Prophet the hand of (Fãṭimah) az-Zahrã’ (a.s.) in marriage the Holy Prophet said in his reply that he would convey his request to Fãṭimah (a.s.) .**
* **The Islamic movement in favour of women was indep-endent.**
* **There is no doubt that in the view of Islam the right of a father is not absolute.**
* **A man is the slave of his passion and a woman is a captive of her lovingness.**
* **Islam has not restrained a woman arbitrarily, rather it protects her from mart and his predatory instincts.**
* **A discussion about a father’s guardianship over his daughter.**

FREEDOM IN DETERMINING ONE'S FUTURE

A young girl came before the Holy Prophet perplexed and anxious and exclaimed:

"O Messenger of Allãh ! . . . from the hand of this father : "But what has your father done to you", the Prophet asked.

"He has a nephew", she replied, "and he has given me in marriage to him before consulting me in the matter".

"Now that he has done it," said the Prophet, "you should not oppose it. Agree to it, and be your cousin's wife."

"O ' Messenger of Allãh! I do not like my cousin. How can I be the wife of a man whom I do not like."

"If you do not like him, that is an. end to the matter. You have full authority. Go and make the choice of a man whom

you would like to marry."

"By chance", the girl finally admitted, "I very much like my cousin and do not like any other person, but because my father did this thing without asking my consent, I have purposely come to put questions on this matter and to get your replies and hear this decision from you, and so inform all women that henceforth fathers have no right to take a decision on their own and give their daughter in marriage to anyone they like. "

The great *fuqahã'* (Islamic law-scholars), like Shahīd ath-thanī * in *Masãlik,* and the writer of *Jawãhiru'l-kalãm,*** have narrated this *health* through non-Shi'ah chains of transmission. In pre-Islamic days the Arabs, as well as non-Arabs, considered fathers to have full authority over their daughters, their sisters and in certain cases even over their mothers, and, in the choice of husbands for them, they did not believe that these women should make their own decisions and having a choice in the matter. It was the sole authority and function of the father or brother, or, if there was no father or brother, of their uncle, to give them in marriage to whomever they liked.

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* Zaynu 'd-Din ibn 'Ali ibn Aḥmad al-'Ãmili, famous as ash-Shahīd ath-Thãnī (the Second Martyr) (911/1505 -966/1559). He was killed by emissaries of the Ottoman Sultan of the time who had been sent to summon him to the Ottoman court in Istambul. His *Masãlik* is a commentary on *Sharãyi'u 'l-Islãm,* a compendium of rulings in jurisprudence by the 7th/13th century jurisconsult Ja'far ibn al-Ḥasan ibn Yaḥyã al-Ḥilli, better known as Abu 'l-Qãsim al-Muḥaqqiq al-Ḥilli.

** Shaykh Muhammad Ḥasan an-Najafi (1192/1778 - 1266/1850), one of the greatest jurisconsults of the last two centuries. *Jawãhiru 'l-kalãm* is a vast commentary (6 large quarto vols.) on the same *Sharãyi'* by al-Muḥaqqiq al-Ḥillī as is *Masãlik.*

This right was practised to such an extent that fathers assumed for themselves this right in respect of a girl still unborn, and, when she had been born and brought up, the man to whom she had been married had the right to take the girl away for himself.

Marrying a woman before she is born:

One day, during the last pilgrimage which the Prophet performed, when he was on a horseback with a whip in his hand, a man came across him and said he had a complaint to make. The Prophet asked what the complaint was.

"Many years ago", he said "during the *jahiliyyah* (the pre-Islamic period), I and Ṭãriq ibn Marqa' had taken part in a battle. During the skirmish, Ṭãriq was badly in need of a spear and he cried: 'Is there any person who can spare me his spear and accept remuneration for it?' I stepped forward and asked what remuneration he would give. He said, 'I give my word that the first daughter born to me, shall be brought up for you.' I accepted the offer and handed over my spear to him. The matter was thus closed and many years elapsed. At last I recollected the pledge and discovered that a daughter had been born to Ṭãriq and that she was of age and that he had her in his house. I went to him, reminded him of the events, and demanded the settlement of the debt. But Ṭãriq went back on his pledge, and broke his word of honour and wanted to start asking for *mahr* (dower). Now I have come to you to know whether right is with me or with him."

"What is the age of the girl? " The Prophet inquired.

"She is grown up, and white hairs have appeared in her head."

"According to what you ask me, neither you nor Ṭãriq is in the right. Go back and look after your own affairs and leave the poor girl to look after herself."

The man was astonished to hear this. For a moment he was absorbed in wondering what sort of a judgement it was. Was the father not in full authority regarding his daughter? If he should pay the dower to the father o the girl, and if he were willingly voluntarily to hand over the girl to him, was that also wrong?

The Prophet, seeing him astonished and perplexed, understood his state of mind and said:

“You should be sure that in the way that I have pointed out neither you nor your friend Ṭãriq will be sinners.”

Exchange of daughters :

‘Shighãr’ marriage was another manifestation of the absolute authority of fathers in respect of their daughters.

Shighãr marriage meant the exchange of daughters. If two persons had two unmarried grown-up daughters, they used to exchange them so that the dower of one daughter would account for the dower of the other girl. Thus the daughter of one man was to go over to the father of the other daughter and vice versa. Islam annulled this custom also.

The Holy Prophet gave az-Zahrã’, his daughter, full freedom in choosing a husband :

The Holy Prophet himself gave away several daughters in marriage. He never deprived them of their right to choose their husbands. On the occasion when ‘Ali ibn Abī Ṭãlib (a.s.) presented himself to the Holy Prophet to ask for the hand of az-Zahrã’ (a.s.), the Holy Prophet said, “Several persons have come to me to ask the hand of az-Zahrã’ (a.s.) but by the displeasure of her countenance she has refused them. Now I shall inform her of your request.”

The Holy Prophet went to his daughter and put the matter before her. az-Zahrã’ did not turn her face away in disapproval this

time, and, by keeping silent and undisturbed, expressed her consent. The Holy Prophet, came away from az-Zahrã’ reciting the *takbīr (Allãhu akbar,* Allãh is Great).

The Islamic movement in favour of women was entirely independence :

Islam did the greatest service to the female sex, and not only by depriving fathers of their absolute authority. It gave complete freedom; it gave individuality, an independence of thought and opinion, and formally acknowledged their natural rights. However, the steps that Islam took in connection with the rights of women are, without doubt, basically different in two ways from what is going on in the west and among those who imitate the west.

Firstly, in the area of the psychologies of man and woman, Islam has accomplished a miracle. We shall discuss this matter in future articles, and shall give clear examples.

The second difference is that despite the fact that Islam acquainted woman with her human rights, gave her individuality, freedom and independence, it never induced her to revolt and mutiny against, or be cynical towards the male sex.

The Islamic women’s movement was a “white” movement untinged with black, red, blue or purple*. Daughters’ respect for their fathers, and wives’ respect for their husbands was not done away with. The foundations of family life were not wrecked. It did not make women despise having husbands, being mothers and bringing up children. Islam did not provide the means for such social gatherings where bachelors and women-chasers go to hunt out their victims free of cost. Islam did not allow wives to

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* In other words the movement was a pure movement based on the fundamental nature of woman, and not allied to some particular man-made ideology. (tr.)

leave the sides of their husbands, and daughters the benevolent protection of their fathers and mothers, to be handed over to men of title and wealthy persons. It did nothing to cause oceans of weeping and wailing to rise to the heavens, crying ‘Oh woe, the sacred law of the family has been shattered, reliance on the father has disappeared; in the midst of all this degeneration, what can we do?’ What can we do when there is so much infanticide and abortion? When there are forty illegitimate births in every hundred? Illegitimate children with unknown fathers, whose mothers, since they did not give birth to them in the loving home of a father, have no strong feelings towards them, and hand them over to a social organization, and then never inquire further about them.

In our country we are in need of a women’s movement, but we need a pure Islamic movement and not a dark and gloomy European movement.

We are in need of a woman’s movement in which young, lustful men are prevented from taking part; a movement which should truly spring from the great teachings of Islam, and not something in which, in the name of amending the Civil Law, the certain laws of Islam are made the victim of fancies and capricious desires; a movement which should be based upon a deep, rational investigation, so that it may make clear for all societies who take upon themselves the name of Islam to what extent they are putting into practice the teachings of Islam.

If, with the help of Allãh, we succeed in continuing this series of articles, when we have come to an end of all the topics necessary to the discussion itself, we shall start writing on the subject of an Islamic women’s movement. Iranian women will then see that they can establish a movement which will be new, acceptable to the whole world and reasonable, and which will have for its fountain-head its own independent philosophy of fourteen centuries, without having to extend a begging hand towards the western world.

Permission of fathers :

The question under consideration about the authority of fathers over daughters is whether the permission of the father is needed in the marriage of a girl who marries for the first time.

According to Islam there are certain things that are certain. Both the son and the daughter, as far as economics is concerned, are independent. The property of a son and a daughter should be put at their disposal if they have reached puberty, are in full possession of mind, and are, in addition, mature, that is, when from a social point of view, they have that degree of mental maturity which allows them to personally safeguard their own property. The father, mother, husband, brother or anybody else has no right to supervise or interfere.

There is another matter which is considered completely certain in connection with marriage. Sons, when they have reached puberty and are fully in possession of mind and mature, are free to make their own choice, and no-one has a right to interfere. But in case of daughters there is a slight difference. If a daughter was once married and is at present a widow, nobody has a right to interfere in her affairs, and she is like a son. But if she is a virgin and is going to enter into a marriage contract with a man for the first time, what is the situation?

In so far as the father does not have absolute authority over her and cannot give her in marriage to anybody he likes without the daughter's desire and consent, there is no dispute. We saw that the Prophet, in reply to the girl, whose father had married her without her knowledge and without her consent, clearly ordained that, in case she did not wish she might marry someone else. There is a difference of opinion amongs the *fuqahã'* (Islamic law-scholars) on the point whether an unmarried girl has no right to marry without obtaining the approval of her father, or whether the approval of the father is in no way a requisite for a legal marriage.

However, there is another thing which is also undisputed and quite certain, that, if the father refrains from giving his approval for no reasonable cause, his right is forfeited and there is unanimity among all the *fuqahã'* of Islam that the daughter then has complete freedom in choosing her husband.

As mentioned before, there is a difference of opinion as to whether the approval of the father is a necessary condition in the marriage of a daughter, and probably the majority of *fuqahã,* especially the *fuqahã' of* recent times, are of the opinion that the approval of father is not a necessary condition. However, there is a group of *fuqahã' who* consider it a necessary condition. Our Civil Law has followed that section of the *fuqahã' who* base their precepts on the precondition and adopt the safer side.

Because the subject is not something undisputed in Islam we shall not discuss it. But, from the social point of view, we consider it necessary to deal with it. Moreover, my own opinion is that the Civil Law has taken up the right course of action.

A man is a slave of his passions and a woman is a captive of her lovingness :

The philosophy behind the fact that a virgin girl must not, or at least should not, marry a man without the agreement of her father is not because a girl is considered to be deficient in some respect, or is counted as inferior to a man as regards social maturity. If it were so what could be the difference between a widow and a virgin, by which a widow aged sixteen years is not in need of the agreement of her father, while a virgin aged eighteen years is, according to this opinion? Furthermore, if, in the view of Islam, women were considered incapable of managing their own affairs, why should Islam acknowledge the freedom of a grown up woman past puberty to manage her own economic affairs and accept transactions involving, say, hundreds of millions under-taken independently of the agreement of her father, brother or husband? There is some other philosophy behind this matter, apart from the aspect

of the reasons of *fiqh* (Islamic law). One cannot afford to ignore this philosophy, and for that, those who drew up the Civil Law deserve a tribute.

This matter has no connection with any deficiency, or lack of intellectual or mental development. It is related to an aspect of male and female psychology. It relates specifically to the predatory side of man's character, on the one hand, and to woman's trust in the loyalty and sincerity of man.

Man is a slave of his basic urges and woman is a captive of her love. What causes man to stumble and lose his footing is his basic motivational urges. According to psychologists, woman has more patience and endurance in the control of her passions. However, that which imbalances woman and enslaves her is the sweet voice of affection, sincerity, fidelity and love from man. It is here that she is trusting.

A woman, as long as she is a virgin and has not come into direct touch with man, very readily believes in the soft whisperings of his affections.

I do not know whether my readers read the views of Professor Reek (?), the American psychologist, in issue No.90 of *Zan -e rũz* magazine under the title, "The world is not the same for men and women", or not. He says that the best sentence a man can say to a woman is: "My dear: I love you" and he also says, "It is happiness for a woman; I mean, to win the heart of a man and maintain it for her whole life."

The Prophet, the divine psychologist, clearly stated this truth fourteen centuries ago. He said, " A woman will never let go from her heart the words of a man to her: 'I love you,' "

Predatory males always make use of this sensibility of women. The trap of "My dear : I am dying from love of you" is the best of traps for hunting down girls who have no experience of man.

Recently the story of a woman, Afsãr by name, who attempted to commit suicide and a man named Jawãd, who deceived her, received much publicity and their case reached the law-courts. This man employed the above-mentioned formula to deceive Afsãr, and Afsar, according to *Zan-e rũz* magazine, said:

"Though I did not speak with him, my heart wanted to look at him every day and every hour."

"I did not fall in love with him, but, with an affection that cried out, I had a psychological need for him. All women are like this; before they fall in love, they have an affection for the lover. For all girls and women, after they find a lover, love comes into existence. I was no exception to this rule."

What we see here is a woman who was a widow and had had experience. Woe befall inexperienced girls!

That is why it is necessary for a girl, who is "inexperienced" with men, to have the agreement of her father, who knows the sentiments of men better, and who, with a few qualifications, wishes good and happiness for his daughter.

The law has not in any way humiliated women in this matter. Rather it has extended the hand of protection over them. It would not be wholly illogical, if sons were to protest as to why the law did not make it binding upon them also to get the agreement of their fathers or mothers, and complain about daughters being at an advantage in having to get the agreement of their fathers.

I wonder how people, who are daily confronted by the stories of Buyuk, Zohreh, 'Ãdil and Nasrin, who see and hear them, can advise their daughters to rebel against their guardians and not take any notice of them.

Such actions, in my opinion, are a sort of contemporary conspiracy between the persons who claim sympathy with women

and those who hunt and chase women. The former prepare the prey, make the arrows ready, and then beat the victims towards the latter.

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The author of the forty proposals writes in issue No.88 of *Zan-e rũz* magazine : "Article 1043 is contrary to and deficient in comparison with every legal article in respect of puberty and mental maturity. It is also contrary to the fundamental of freedom for human beings and the charter of the United Nations."

It seems that the writer's conception is that the purport of the above-mentioned Article is that fathers have the authority to marry their daughters according to their own free will to anybody they like, or that they have the right to prevent the marriage of their daughters without any reasonable cause.

What is the harm, and how is it inconsistent with fundamental freedom for human beings, if the choice of marriage is in the hands of the girls and if we consider the agreement of fathers a condition of the marriage being properly concluded, all this with the condition that fathers have no malicious intention and are not particularly tactless in withholding their approval? It is a precautionary step and a vigilance which the law has provided to safeguard the rights of women who have had no experience of men and arises from a sort of misgiving about man's good nature.

Our author writes :

"Our law-giver considers a girl of thirteen years capable of marriage before she is mentally mature enough to understand the meaning of being a wife or having a husband, a creature without the competence to buy or sell a few kilos of vegetables, and expects her to make the choice of someone as her partner for her whole life. However, our law does not allow a girl of twenty-five or forty, who has an education and has passed

through university and has reached a high standard of learning, to marry of her own accord without the permission and approval of her common, illiterate father or paternal grand-father."

Firstly, where exactly is it that the law can be taken advantage of so that a girl of thirteen can marry without the permission of her father and a girl aged twenty-five or forty who has passed through university cannot do so? Secondly, the condition of having the father's permission is within certain limits and originates in fatherly affection and an understanding of the feelings of men towards women; and in case any father withholds his approval for no good reason, he forfeits his right.

Thirdly, I cannot imagine that a judge has yet been found who claimed that, according to the Civil Law, rational and intellectual maturity is no condition in marriage, and that a thirteen year-old girl who, according to the writer, does not understand the meaning of marriage and the choice of a husband, may marry. The Civil Law, in Article 211 states: "for the parties to the con-tract, to be considered competent, they must be of age of sound mind and mentally mature". Although in the above article there occurs the phrase 'the parties to the contract', and the section concerning marriage is not the section concerning contracts, be-cause this matter is mentioned under a general rubric (contracts, transactions and obligations), beginning from Article 181, the experts in the Civil Law have take it to mean 'general competence' for the conclusion of all agreements.

In all old marriage contracts the name of the man was preceded by the expression 'adult, mentally sound and mature', and the name of the woman was likewise preceded by the same words in their feminine form. How could it have been possible for the composers of the Civil Law to have ignored this salient point.

The composers of the Civil Law did not imagine that the process of intellectual decline had reached to such a point that, in spite of the fact that they indicated most clearly the matter of

'general competence', they should once again have to especially mention these conditions in the chapter of marriage.

One of the commentators on the Civil Law, Dr. Sayyid 'Alf Shaygan, considers that there is a contradiction between article 1064 which says "the one who concludes a contract must be of adult age, of sound mind, and must have intention", which he thinks concerns a couple to be married and explains their competence for marriage but does not mention their mental maturity, and article 211 which mentions general competence. He then proceeds to his commentary. Now, article 1064 concerns the person who concludes the contract, and such a person is not required to be of "mature mind".

What can be complained about in this connection is the behaviour of the Iranian people, and not the Civil Law of the land, nor the law of Islam. Amongst our men, most fathers still consider themselves to have absolute authority, just like the fathers of the *jahiliyyah* (the pre-Islamic period). They imagine that a girl's expressing herself in the matter of the choice of her husband, her partner for life, and the father of her future children, is an act of immodesty and against decorum. They pay no attention to the intellectual maturity of their daughters, and admitted prerequisite according to Islamic commandments. There are very many marriages concluded before the girls become of mature mind and, in the view of Islamic law, these are null and void.

Those who solemnize marriages do not enquire into and do not request full information regarding the intellectual maturity of the girls, and they consider the attainment of puberty by a girl as a sufficient requirement, although we know of many stories of great *'ulama'* concerning their examination of the intellectual and mental maturity of girls. Some of the *'ulama'* have required the religious maturity of the girl as a condition. They would only solemnize the marriage of those girls who could explain with reasoning the basic principles of Islam. Unfortunately,

most guardians and solemnizers of marriages do not observe these considerations.

People like the author of the forty proposal do not like to criticise the conduct of those persons who break the law. They prefer to put all the blame on the Civil Law and under-mine the faith of people in the Civil Law, which is rooted in the Islamic laws.

There is one objection which, in my view, can be made against the Civil Law in respect of Article 1042.

This Article reads:

"After completing her fifteenth year, a girl may still not marry without the permission of her guardian until she has completed eighteen years."

According to this Article, a girl between fifteen and eighteen years of age, although she may be a widow, cannot marry without the permission of her guardian. However, neither according to the Shi'ite jurisprudence, nor on the basis of reason, should a woman who fulfils the conditions of puberty and mental maturity, and who has once before been married, need to get the approval of her guardian.

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PART FOUR

ISLAM AND MODERNITY

- **The exigencies of the age.**
- **Religion and the exigencies of the age according to Nehru.**
- **The distinctive feature of the adjustment of Islam to the march of time has amazed non-Muslims.**
- **For unchanging needs Islam has unchanging laws, and for changing needs it takes a changing and variable position.**
- **If we make everything conform to the times, to what should we make the times conform.**
- **The idea that Islam cannot change with the times arises from the rigidity of one group and the ignorance of another.**
- **The Qur'ãn has compared the Islamic community to a plant which is growing.**
- **The phrase "signs of the times" have destroyed many families.**
- **Rigid people do not accept anything apart from what is already worn out, and the ignorant choose every ephemeral thing as suitable for the times.**
- **The nuts and bolts used in Islamic law are imbued with adaptability and elasticity.**
- **It does not matter what you wear, but you must not imitate slavishly.**
- **Islam believes in the right of veto in the form of the principles of *"lã ḥaraj"* (no blame) and *"lã ḍarar"* (no harm).**

ISLAM AND MODERNITY (1)

The exigencies of the age :

In the introduction to "Man and his Future*, in which I investigated the subject of the greatness and then decay of the Muslims, I recognized that the causes of the decline of the Muslims could be examined under three headings: Islam, the Muslims, and external influences. In that introduction, one of the twenty-seven topics which I thought required to be studied and examined was this very topic, and I promised to publish a short book with the title: 'Islam and the Demands of the Age', and I had already collected a good deal of notes for it.

In this series of articles, it is not possible to put all the subject matter that should be set forth in a book. I shall, however, explain matters to the extent that I may enlighten the minds of the respected readers on this matter.

The subject of religion and progress is one of those subjects which has been brought up in other religions much more than

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* Muṭahhari, Murtaḍã – *Insãn va sarnivisht.* Qum, (Iran) 1385 A. H.

it has been for us Muslims. Many of the world's intellectuals have abandoned religion only because they thought that religion and progress were incompatible. They entertained the idea that having a religion entailed the discontinuance and stopping of, and struggling against, movement and change. In other words they considered religion to be a fixedness, a monotony and solidification of existent forms and patterns.

Nehru, the late Prime Minister of India, had anti-religious beliefs, and adhered to no tradition or religion. From his writings it transpires that the thing that he abhorred in religion was its dogmatic aspect and its quality of seeing everything in only one perspective.

In his later years, Nehru felt that something was missing and wanting both in his own self and in the universe, and that this vacuum or gap could not be bridged except by a spiritual force. Despite that feeling, he was afraid of being attached to religion, because of that very stagnancy and uni-perspectiveness which, according, to him, was there in every religion.

An Indian journalist, a Mr. Karanjia (?), had an interview with Nehru towards the end of his life, and that was apparently the last occasion when Nehru gave expression to his view on general universal topics.

During that interview, Karanjia questioned him about Gandhi, and remarked that some intellectuals and progressivists believed that Gandhi, by his perceptive solutions and idealistic and spiritual methods, had weakened and shaken Nehru's original beliefs in scientific socialism.

In his reply, Nehru told him that it was necessary and good to benefit from spiritual and idealistic methods also, and that he had always believed in them as Gandhi had, and that at the time of speaking it was of great importance and all the more necessary to count on those means. The reason was that in the face of the

spiritual vacuum of modern civilization it was necessary, more than before, to look for spiritual and ideological answers.

Karanjia, afterwards, put some questions about Marxism and Nehru pointed out some of the shortcomings of Marxism and again reverted to the way of spiritual solutions to problems. It was then that Karanjia asked Nehru whether the statements he had just made, with their references to moral and spiritual concepts, did not display a difference from the Jawaharlal Nehru of yesterday. All his statements pointed to the idea that Nehru, in the ripening of his age, was in search of God.

Nehru agreed, and said that he had indeed changed and his insistence on the spiritual and moral values had not been without care and consideration. He pointed out that another matter was then created up, and that was how morality and idealism could be raised to a higher level. He again remarked that clearly religion existed for that purpose, but that religion had unfortunately degenerated because of its short-sightedness and its blind adherence to certain lifeless rites and rituals and to the performances of unchanging ceremonies. The outward form and the external shell of religion continued to exist while its spirit and real meaning had been lost.

Islam and the demands of the age :

Amongst all the traditions and religions, none has produced so much influence or as deep an impact on the different aspects of human life as Islam has done. In its procedures Islam is not content only with a series of acts of worship, recitings and incantations and a collection of moral exhortations, but it also deals with the fundamental directions that relationships between human beings should take, and the rights and duties of individuals in respect of each other in various situations, in the same way as it has explained the relations of men with God. So it is only natural that the question of suitability and harmony with the times should be given more attention with regard to Islam.

Incidentally many non-Muslims scholars and writers have studied the social and the civil law of Islam and have spoken highly of Islamic laws as a progressive series of laws, and they have drawn attention to and commended the living character and enduring nature of this religion and its ability to adapt its laws to the advance of time.

Bernard Shaw, the great English liberal writer said :

" I have always had the greatest respect for the religion of Muhammad on account of its extraordinary quality of staying lively. In my opinion, Islam is the only religion which has the ability to harmonize and exert its control over differing circumstances and changing ways of life, and to confront the diversities of the centuries.

"Thus I predict, and already the signs can be seen, that tomorrow the faith of Muhammad will become quite accepted in Europe.

"The theologians of the Middle Ages drew a dark picture of the religion of Muhammad, as a result of their ignorance and prejudices. Because of their malice and fanaticism, he seemed, in their eyes, to be against Christianity. I have read extensively about this man, this extraordinary man, and I have come to the conclusion not only that was he not against Christianity, but that he should be called the saviour of mankind. I believe that if such a man as he were to be in charge of the present-day world, he would manage to solve the problems and difficulties of the world in such a way that he would ensure the ideal peace and happiness of humanity."

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* Translated from the Persian, original untraced. (tr.)

Dr. Shibli Shumayyil, a Lebanese Arab, professes materialism. He translated the *Origin of the Species* of Darwin into Arabic for the first time together with the commentary of the German, Buchner, as an appendix, to serve as a weapon against religious beliefs, and he brought it within the reach of Arabic speaking people.

In spite of his being a materialist, he could not restrain himself from admiring and praising Islam and had no reservation about acknowledging its greatness. He always spoke highly of it as a living religion, and of its ability to adapt to the times.

In the second volume of his "Philosophy of Evolution and Progress" (*Falsafatu 'n-nushũ̓ wa ʿl-irtiqã̓*) , which he published in Arabic, he wrote an article under the title "The Qur'ãn and Prosperity" (*al-Qur̓ ãn wa 'l-'umrãn*) in refutation of an article by a non-Muslim who had travelled in Islamic countries and had put the blame of the decline of the Muslims onto Islam.

Dr. Shibli Shumayyil diligently showed in this article that the cause of the decline of Muslims was their deviation from the social teachings of Islam and not Islam itself. He expressed his view that that section of westerners who attack Islam, either do not understand Islam, or else have malicious motives and want to make people in the east cynical towards the laws and prescriptions, which, anyway, have disappeared from among them, and thus fix the yoke of subservience around their necks.

In our own times, this question of whether Islam can adapt to the demands of the age, is very commonly asked. I myself have come into contact with different classes of people and specially with those who are educated and well-travelled. I have found no other matter involved to such a degree in controversy.

Confused thinking :

They sometimes give their questions a philosophic tinge and say that everything in this world is subject to change. Nothing is immutable and fixed. Human society is not an exception to that rule, so how is it possible that a series of social laws can remain always unchanged.

If we attend only to the philosophic aspect of the question, the answer is evident. A thing which is always changing is at one time new and then becomes old. It grows and then decays. It progresses and develops, just as the things of this world and its material composites. But the laws of nature are constant. The living organism, for example, has developed and is developing according to a particular law and scientists have described this law of evolution: living organisms are themselves continually undergoing change and evolving. But what about the laws of change and evolution? Of course, the laws of change and evolution do not change and do not evolve, and we mean the laws themselves. It makes no difference whether the law in question is a natural law, or a derived or man-made law, because it is entirely possible for a derived or man-made law to be derived from nature and the order of things, and for that which deter-mines the direction evolution takes to be individuals or human social groups.

However, the questions that are put in connection with the adaptability or non-adaptability of Islam to the demands of the times, do not only have a general or philosophic aspect. The question which is repeated more often than any other is that since laws are made according to needs, and since a human being's social needs are not fixed and unchanging, social laws cannot be fixed and unchanging.

This one is a very good and valuable question. Incidentally one of the miraculous aspects of the sure religion of Islam, on account of which every intelligent and sagacious Muslim has a sense

of pride and honour, is the fact that Islam with regard to unchanging needs of the individual or society envisages unchanging laws, but that in the case of temporary and changing needs it conceives of a changing attitude. We shall, with the help of Allãh, comment on this to the extent that this series of articles permits.

What does time itself conform to?

However, we think it necessary to mention two things before we start discussing this matter.

One of them is that most of those people who talk of progress, evolution and change in the present circumstances think that every change that takes place in social conditions, especially when it originates in the west, should be counted as evolution and progress; and this is the most misleading idea that has taken hold of people today.

According to these people, because the amenities and conveniences of life change day by day, because the more perfect replaces the more defective, and because knowledge and technology is in a state of advancement, all the changes that take place in the life of men are a kind of progress and development, and should be welcomed. For it is the momentum of time and, like it or not, it is bound to have its way.

As a matter of fact, neither are all changes the direct result of knowledge and technology, nor is there any necessity or momentum at work. Although knowledge is in a state of progress, the capricious, rapacious nature of man is not idle. Knowledge and the intellect guide man towards perfection, and the capricious, rapacious nature of man tries to drag him towards decomposition and deviance. His capricious and rapacious nature is continually trying to turn knowledge into a tool for itself, and to make use of it for the attainment of its carnal and animal appetites. Time has within it decomposition and deviance in the same way as it

has within it progress and evolution. One should advance with the progress of time, but also struggle against decomposition and deviance of time. Both reform and reaction rise up against of time, with the difference that reform takes a stand against the corruption of time and reaction stands in the way of the progress of time. If we consider time and its changes as the final criteria of good and evil, then with what standard can we measure time itself and its changes? If every thing has to adapt to time, to what is time to adapt? If man is helplessly dependent on time and its changes, what is the role of the activity, creativeness, and constructiveness of man's will?

Man steps aboard the vehicle of time while the vehicle is in motion. He should not neglect the steering and control of that vehicle even for a moment. Those who talk much about the changes of time and neglect to steer and control it have for-gotten the role of the effectiveness of man, and are like the rider of a horse who has put himself under the control of the horse.

Adaptation or abrogation ?

The second point which has to be mentioned here is that some people have solved the difficulty of Islam and the demands of the times by means of a very simple and easy formula. They say that Islam is an eternal religion and is adaptable to any age and any time. But we want to know how that adaptation is to be brought about and what that formula is. They reply: "Once we see that the temporal circumstances have changed, we forth-with abolish the existing laws and establish other laws in their place."

The writer of the forty proposals has solved this difficulty in the same manner. He says that the worldly laws of religion should be supple and flexible and should be in harmony and conformity with the progress of knowledge, learning and the spread of civilization. And such mildness, flexibility and adaptability with the demands of time is not only not against the lofty teachings of

Islam, but is exactly in conformity with its spirit. *(Zan-e rũz,* no. 90, p.75).

The said author writes before and after the above sentences that because the demands of the times undergo change, because every age demands new laws, and because the civil and social laws of Islam are in accord with the simple life of the Arabs of the *jahiliyyah* (pre-Islamic times), and are frequently the actual customs and traditions of pre-Islamic Arabs and do not conform with the present age, it is necessary that other laws should be passed today in place of these laws.

People with such views should be asked, how it is that if the meaning of the conformability of a law with the exigencies of a particular age is its capacity for abrogation, this law does not have that suppleness and flexibility; why is this law not con-formable to a particular age.

This justification of the suppleness and adaptability of Islam to the times can be compared to a man who says that books and a library are the best source of pleasures in life. When he is asked to explain himself he says because any time he wants to enjoy himself a man can immediately sell the books and spend the money, thus acquired, on having a good time.

This author says that the teachings of Islam are of three kinds. The first kind are the principles of belief, such as belief in *tawḥīd* (the Oneness of God), the Resurrection, etc. The second kind consists of worship such as the preparation and performance of prayer, fasting, purification, cleanliness and the *hall* (pilgrimage to Mecca), etc., and the third kind consists of the laws which are relevant to people's lives.

The first and the second kinds are a part of religion, and the things which the people should always observe are these very matters. But the third kind is not a part of religion. Because religion does not have anything to do with people's lives, and the Prophet did

not bring these laws on the grounds that they were a part of religion and related to the obligations of the Message. But, since the Prophet was, incidentally, the man in charge, he had to deal with these matters also. Otherwise, the function of religion is only to lead people to worship, prayer and fasting. What has religion go to do with the life of this world?

I cannot imagine that someone can live in an Islamic country and be so ignorant of the rationale of Islam?

Has the Qur'ãn not stated the purpose of sending the Prophe-ets and Messengers? Has the Qur'ãn not most explicitly stated :

لَقَدْ أَرْسَلْنَا رُسُلَنَا بِالْبَيِّنَاتِ وَأَنْزَلْنَا مَعَهُمُ الْكِتَابَ
وَالْمِيزَانَ لِيَقُومَ النَّاسُ بِالْقِسْطِ .

"Indeed, We sent our Messengers with the clear signs, and We sent down with them the Book and the Balance so that men might uphold justice. . ." (57:25)

The Qur'ãn mentions social justice as a fundamental aim of all Prophets.

If someone does not wish to act according to the Qur'ãn, why should he commit a bigger sin and denigrate Islam and the Qur'ãn? Most of the misfortunes that have befallen men these days are for this very reason that men have given up the unique support and backing of the very ethics and laws which are religion.

For about fifty years we have been listening to the song that Islam is quite alright provided it is limited to the mosques and places of worship and does not concern itself with social matters. This song was composed beyond the borders of the Islamic countries, but has been broadcast in all of them. Let me explain this sentence in an easier language so that I can point out the real purpose of the original composers.

The real meaning, briefly, is that as long as Islam stands in the way of and holds back communism it should exist, but when it has an effect on and clashes with the interests of the west it should cease to exist. The prescribed worship of Islam, in the view of westerners, should remain, so that when necessity arises people may be aroused against communism on the excuse of its being a atheistic, ungodly system.

However, the social laws must go, because they are the philosophy of life of Muslim people, and because of them Muslims have a feeling of independence and individuality in face of the people of the west, and become difficult to digest in the west's voracious appetite.

Unfortunately those who originated this idea are victims to a great misunderstanding. Firstly, it is now fourteen centuries since the Qur'ãn discredited those who said:

نُؤمِنُ بِبَعضٍ و نَكفُرُ بِبَعضٍ

(*we believe in some of it and disbelieve in some*).

It has announced that dividing up the prescriptions of Islam is unacceptable.

Secondly, I think that the time has now come for Muslims to refuse to be taken in by these deceptions. The critical sense of the people has been more or less awakened, and gradually they will begin to discriminate between the appearance of progress and development which is the product of the power of human knowledge and thought on the one hand, and the appearance of corruption and decay on the other, irrespective of whether it originates in the west or not.

The people of Islamic countries have more than before realized the value of Islamic teachings and have appreciated what a unique, self-sufficient philosophy of life Islam and its prescriptions represent,. and they will at no cost abandon it.

Muslims have realized that the propaganda campaign against

islamic laws is nothing but a colonial ruse.

Thirdly, those who initiated this idea should know that Islam, when in power, can confront any atheistic or non- atheistic system and is able to govern a society with a philosophy of life, and it does not need confine itself to mosques and places of worship. If they wish Islam to be imprisoned in places of worship and thus clear the ground for western ways of thought, there is every likelihood of the ground being cleared for other ideologies that are against the western way of thinking.

The fact that the West is today being attacked in some Islamic countries is the fruit of this very mistake.

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ISLAM AND MODERNITY (2)

Man is not the only living creature who lives a gregarious life. Many animals, especially insects, have a social life. They follow a series of fixed rules and a wise, disciplined mode of life. The principles of mutual help, division of labour, production and distribution, command and obedience, order and compliance are in force in their social groups.

Bees and some ants and termites have been favoured with a civilization, discipline and organization which human beings, who consider themselves the noblest of creatures, would take years if not centuries to catch up with.

Their civilization, unlike human civilization, did not pass through eras such as the priminitive jungle period, the stone age, the iron age and the nuclear age. They attained the same civilization and organization that they at present have on the day they were brought into existence on this earth, and no change has occurred in their condition. It is only the human being, whose life, according to the Qur'ãn: **وَ خُلِقَ الانسَانُ ضَعيفاً** (*and the man was created weak*)**,** begins from zero and moves forward without stop.

For animals, the exigencies of the times are always the same, and do not further disturb their lives. For them the desire for modernization and a love for what is new has no meaning. The new world and the old world do not exist. Science does not make new discoveries for them every day, and does not upset the

the pattern of their lives. Light and heavy technologies do not invade their market every day with new and better products. Why? Because they live by instinct and not by reason.

Man, on the other hand, is different. His social life is always subject to change and transformation. Every century the world changes for man. The secret of man's being the noblest of creatures also lies in this. Man is a fully-grown and mature son of nature. He is created with the state and the capacity of not having to stand in need of the direct guidance and protection of nature, nor of that mysterious power called instinct. He lives by intellect and not by instinct.

Nature has acknowledged human beings as being mature in mind, and has left them as independent beings and withdrawn its direct control from them. All that an animal can do according to instinct and under the influence of un-transgressable natural laws, must be done by a human being with the power of the intellect, through knowledge and according to positive laws and the *sharī'ah,* which it is possible to disobey.

The root-cause of all the corruption and way wardens perpetrated by human beings in the course of progress and development, of decline, degeneration, collapse and destruction also lies here.

Just as the roads of progress and development are open for human beings, so also are the roads of corruptions and deterioration not closed for them.

Human beings have been given the status of carrying upon their shoulders, in the words of the Qur'ãn, the burden of trust which the skies, the earth and the mountains could not bear. In other words, human beings consented to live an independent life and accepted the responsibility of duty and laws. By that very account they cannot be immune from transgression, ignorance, self-aggrandizement and wrong-doings.

In the same place where the Qur'ãn mentions the unique ability of human beings to bear the burden of trust and responsibility, it goes on, without a pause, to ascribe to them their tendency to be transgressors, and ignorant also.

These two possibilities in a human being, namely the possibility for development and the possibility for decline, cannot be separated from each other. A human being is not like an animal who, within his collective life, does not move a step forwards nor a step backwards, neither moving to the right nor to the left. There is in human life sometimes a move forwards and sometimes a move backwards, and if there is movement and speed, there is also stopping and slowing-down. If there is progress and development, there is also decay. If there is justice and virtue there is also injustice, vice and degeneration. If there are manifestations of knowledge and the intellect, there are indications of ignorance and sensuality also.

There is always the possibility that the changes and new ideas and values that spring up in a particular period may be disadvantageous and injurious for mankind.

Rigid people and ignorant people :

One of the characteristics of human beings is their tendency to go to extremes. If a man has moderate views, he tries to separate changes of the first kind from changes of the second kind. He tries to move forward in time with the power of knowledge, initiative, endeavour and hard work. He tries to adapt himself to manifestations of progress and advance in his age, and simultaneously tries to check the mistaken directions taken in his times and refuses to conform to them.

However, it is unfortunately not always like this. There are two dangerous diseases that always threaten man in this connection. These are: the disease of inflexibility and conventional-ism, and the disease of naivety and instability. The consequence of the

former disease is stagnation, stopping, and keeping back from advance and development, while the consequence of the latter disease is backsliding and taking the wrong direction.

A conventional, inflexible person hates everything that is new and accept nothing but the old, while the naive, unstable person counts every newly manifested thing as permissible in the name of a "necessity of the times", or modernity and progress. An inflexible person considers every new thing to be a corruption and a deviation, and the naive person counts each and every new thing as 'civilization' and an extension of knowledge and learning.

An inflexible person does not distinguish between the kernel and the shell, the means and the end. To him, religion has the responsibility of protecting ancient traditions. In his view, the Qur'ãn was revealed for the purpose of stopping the flow of time and nailing down the situation of the world exactly as it is.

In his view, the recitation of the last part of the Qur'ãn,* writing with a reed pen, using a traditional box, taking one's bath in a traditional bath house, eating with the hand, using oil-lamps for lighting, staying unlettered and uneducated should all be preserved as religious observances. A naive progressivist, on the other hand, wants to know every new fashion and new idea that has started in the west, and promptly follows them and calls them modernization and requirements of the times.

Both the conventionalist and the naive progressivist agree in supposing that any situation obtaining in times gone by was a part of religious commandments and rites. The difference lies in this: the conventional person deduces the conclusion that those rites ought to be maintained and preserved, and the progressivist that religion is inextricably connected to the worship of the past, love of fixedness and stagnation.

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* A traditional part of an elementary Islamic education. (*ed.*)

In the recent past the problem of incompatibility between science and religion has been a subject of keen discussion and controversy amongst the people of the west. The idea of incompatibility between science and religion arose basically because of two reasons. One of them was that the church maintained that certain matters of old science and philosophy were religious matters, and should, from the religious point of view, be accepted as dogma, and then scientific advances showed these ideas to be wrong. Besides that, it was also due to the fact that the sciences altogether altered and reformed the pattern of life.

Religious conservatives wanted to bring the outward material form of life under the rule of religion, just as they had done with philosophical matters, giving them a religious tinge. The naive and the ignorant also thought that this was the case, and imagined that religion viewed the material life of people as a having a particular form and pattern. And when the material form of life had to be changed according to the judgement of science, science proclaimed that religion had been abrogated.

The inflexibility of the first group together with the ignorance of the second brought about the illusory idea that science and religion were incompatible.

The story in the Qur'ãn :

Islam is a religion which moves forward and carries forward. So as to remind Muslims that they should always be in a state of growth, development and evolution, but within the framework of Islam, the Qur'ãn compares the followers of Muhammad (s.a.w.a.) to a seed that is sown in the ground. That seed grows forth in the form of a tiny tender leaf, and afterwards strengthens itself and stands erect on its stem. It passes through these stages with such speed and strength that farmers are surprised and joyful over it.

This is an example for that society towards which the Qur'ãn points. Development is one of those goals towards which the Qur'ãn directs. The Qur'ãn lays the foundation of a society which is continuously in a state of growth, extension, dilation and expansion.

Will Durant said that no religion has called its followers with such strength as Islam has done. The history of the advent of Islam shows how vigorous and strong Islam was in establishing society anew and making it progress.

Islam is against both inflexible conservatism and ignorant naivity. The danger which threatens Islam comes both from the region of the first group and from the region of the latter group. The conservatives, the inflexibly minded, and those who like to show that every old thing belongs to Islam, when, in fact, it may have no connection with the pure religion of Islam, have given the naive progressivists an excuse to count Islam against development in its true sense. On the other hand, the imitation, fashion-worshipping, and aping of the west, and the belief that the prosperity of eastern people lies in their being physically and spiritually, outwardly and inwardly, westernized, gives the naive people the idea that they should take on all of the customs, manners and traditions of the west, that the civil and social laws should all be made to conform to western laws. They make the conservative group look pessimistically at every thing new and consider it a danger for their religion, their independence and their national and social status.

In the middle of all this, it is Islam that can amend the mistake of both groups.

The attitude of the conservatives gives good cause for the assaults and attacks of the progressivists, and the stupidities of the progressivists make the conservatives all the more adamant. It is strange that the apparently civilized progressivists suppose that time cannot produce mistakes and errors. Do they think that the

changes of time are brought about not by man but by some other being? Since when and from what date has mankind become entirely infallible and thus made the changes of time free from any error or mistake?

Just as man makes new discoveries in every age for the benefit of humanity under the influence of his scientific, moral, aesthetic and religious inclinations, so he is also under the influence of his egotism, ambition, sensuality, and greed for wealth and exploitation. Just as man is successful in making new inventions and finding out better ways and means of living, he is also, from time to time liable to make errors and mistakes. Anyhow, the self-centred progressivist does not understand these words. He always repeats his cliché that the world today is what it is.

What is even more strange is that these people think of the fundamentals of life in the same way they think of their shoes, hats and clothes. Just as shoes and hats are once new and then become worn out, and have value when new and just out of the factory and must be purchased then, but must be caste away when they are old, so all the realities of the universe are like this. The idea of these naive progressivists in respect of the good and bad of a thing is nothing except its being new or old. According to them feudalism, that is to say, some powerful man unlawfully and forcibly calling himself a master, establishing himself comfortably while hundreds of hands work in order to feed that mouth, is bad, not in itself, but because it has now become out-dated and the world today does not accept it. Its time is no more, and now it is considered as obsolete. Naturally, at the be-ginning, when such a thing first appeared and was brand-new on the world market, it was good.

According to them, it is bad to exploit women because the world today no longer approves of it and does not tolerate it, but yesterday, when the world did not acknowledge the right of inheritance for women, did not accept their right of ownership and did not pay any heed to their opinion and views, that too

was once new, and had then come newly onto the market.

According to people like them, because this age is the space age and it is therefore impossible to abandon the aeroplane and ride a mule, to ignore electricity and light an oil lamp, to disregard large spinning mills and use a hand spinning wheel, to turn a blind eye on giant printing machines and write by hand, so also it is impossible to avoid dances, not to take part in bathing and picnic parties, not to get drunk and cavort around, not to play poker, not to wear skirts above the knees, because all these things are the phenomena belonging to the modern age. If these things are not done, it would mean a return to the age of mule-riding.

How many individuals have been ruined and what count-less number of families have been wrecked by the phrase “the signs of the times”.

They say it is the age of science, the era of the atom, the age of the satellite, and the epoch of rockets. Very well, we also thank Allãh that we live in this age and time and in this epoch and era and wish that we may increasingly and in a better way take advantage and derive benefit from science and art. Notwithstanding that, a question arises — have all the other incentives and motivating factors become dried up except the fountain head of knowledge? Are all the phenomena of this century the result of nothing but scientific progress? Does science claim that the nature of the individual scientist has been completely subjugated, made obedient and humanised?

Science does not make such a claim for the individual scientist, and that is why a group of scientists and scholars can undertake research and make discoveries with the utmost purity and sincerity of purpose, while groups of power-hungry, ambitious and money-worshipping people employ the results of their scientific labour to attain their nefarious purposes. The loud complaint of science is always that it has become the object of exploitation by man’s unruly nature. The preoccupation and misfortune of our age

is this very thing.

Science takes a step forward in the field of physics and discovers the laws of light, but a group of profiteers make the same discovery a means to make films with unforeseeably destructive results. The science of chemistry advances, and finds out how to make new compounds, whereupon some people begin to think how to profit from this advance and cook up a catastrophe for the human soul and call it heroin. Science finds its way to the heart of the atom, and harness its wonderful power, but before any plans for its use for the betterment of humanity could be made, the power-hungry men of the world manufactured bombs from it and then dropped them on innocent people.

When a celebration was held in honour of Einstien, the great scholar of the 20th century, he himself mounted the rostrum and said, "In whose honour are you going to hold this celebration — one whose talents have been the source for the preparation of the atom bomb?"

Einstien did not use his intellectual power for the preparation of a bomb, but the ambitions of another group did exploit his genious.

Heroin, the atom bomb, this or that kind of film can never be accepted just because they are "signs of the times". If the most perfect bomb were to be dropped by the most ingenious array of instruments by a model pilot on innocent people, the savagery of the act would not be lessened in the least.

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ISLAM AND MODERNITY (3)

The main argument of the people who say that in family duties we should follow western patterns is that time, and, with it, social values, have changed, and the exigencies of the twentieth century demand that we follow them. Thus if we do not make our view regarding this point clear, our further discussions will be incomplete.

If we were to undertake a full and thorough discussion of this question, there would not be enough space in this series of articles, because many aspects need to be dealt with and examined. Some of them are philosophical, some to do with religious jurisprudence, and others moral and social. I hope to be able to discuss those points in detail in a book, *Islam and the Exigencies of the Modern Age,* which I intend to write. The preparatory notes are ready, and I shall examine the material in detail and present it before those interested.

At present, it. will be enough to clarify two points:

Firstly, keeping up with the times is not as simple a matter as these ill-informed claimants imagine, and as they repeat with their clichés. With time, there is both progress and going astray. One should move forward according to the advance of time, but fight against being led astray by time. To discriminate between the two, one should look to see from which origins new phenomena and currents rise forth, and in what direction they flow-

It must be determined from which of the drives and urges of man’s existence they have sprung, and from which of his social groupings. Does the change arise from the higher, human drives of man; or from his lower, animal urges? Have men of knowledge and science and their selfless study brought about these changes; or have the indulgence, status seeking and desire for wealth of the corrupt strata of society? These matters have been fully explained in the preceding two articles.

The secret of the dynamism and flexibility of Islamic laws:

Another matter which should be made clear is that Islamic thinkers believe that within Islam there is a enigmatic secret which enables this religion to adapt to and improve according to the advance of time. They believe that this religion is in harmony with the forward movement of time, with the development of learning, and with the changes that arise from such development. Now we must see what this secret is. In other words, we have to look into the “nuts and bolts” that went into the making of this religion, and which have given it that quality of dynamism which has enabled it to remain in harmony with the changing circumstances arising from advances in knowledge and learning without needing to put aside any of its precepts, and without any contradiction arising among them. What is this enigma? This is the matter which will be explained in this article.

Some of my readers will be aware of what I myself, more than anybody else, am conscious of, that this subject has a technical and specialized aspect, and that it should only be discussed with specialists.

However, seeing that there are many pessimists among those who have inquired from us and among those people with whom we have come into contact who are concerned about this matter, and having understood that they are unaware that Islam has such a special quality, we will enter into this subject only to such an extent as to relieve the pessimists of the pessimism and to give

others and example of dynamism within Islam.

The respected readers may consult the excellent book *Tanbihu ‘l-ummah* (A Warning for the People) compiled by the late Ãyatullãh Nã’īnī* , and a very valuable article *wilãyat wa za ‘ãmat* (Guardianship and Authority) by the great contemporary scholar ‘Allãmah Tabataba’ i * * which is published in the book *Marja’iyyat wa rũḥãniyyat* (The ‘Ulamã’ and Reference to Religious Authority)* * * , to see that discussions of this kind of problem have not been ignored by the leading scholars of Islam. Both the books are in the Persian language.

There are a number of factors which contribute to the secret of how the pure religion of Islam, with the fixed and unchanging laws that it has, can accomodate the development of civilization and culture, and can remain in conformity with the changing patterns of life, and we shall explain some of them.

Attention to essence and meaning as opposed to shape and form:

1. Islam has not meddled with the outward pattern and form of life, which is wholly dependent upon the standard of human knowledge. Islamic instructions are concerned with the spirit, meaning and aim of life and the best course that a man should adopt to attain that final aim. Knowledge neither alters the aim and spirit of life nor directs to a better, shorter and safer route to attain the aims of life. Knowledge always places in the power of

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* Muhammad Ḥusayn ibn ‘Abd ar-Rahim an-Na᾽ini (1277/1860 – 1355/1936) one of the great recent teachers of an-Najaf al-Ashraf (Iraq).

** ‘Allãmah Sayyid Muhammad Ḥusayn Ṭabãṭabã’ī (1321/1903 —), one of the most renowned contemporary scholars of Islam, now living in Qum. Author of the great commentary on the Qur’ãn, *al-Mizãn,* and *Shi‘ah dar Islãm* (translated into English by Dr. Sayyid Ḥusayn Naṣr as *Shi‘ite Islãm),* he is a master of both the sciences of Divine Law and the intellectual sciences, metaphysics and ʿ*irfãn.*

* * * An anthology of articles published following the death of the great *marja’-e taqlīd* Ãyatullãh Burũjirdī (1380 / 1961) .

man better and more perfect resources for attaining the aims of life and for traversing the route to reach and attain those aims.

Islam by keeping the aims under its own authority, and by giving over the forms, models and tools to the realm of knowledge and skill, has kept away from all conflict with the development of culture and civilization. Furthermore, by encouraging the factors which develop culture and civilization, that is, science, labour, piety, determination, courage and perseverance, Islam has itself guaranteed the fundamental practical ground plan for the development of civilization.

Islam has set up indicators along the path of mankind. On the one hand, these indicators point towards the right course and the right destination, and, on the other hand, they warn against the dangerous signs of deviation and decline. All Islamic injunctions consist either of the first kind of indicators, or the caution signals of the second kind.

The ways and means of life in every age depend upon the level of information and knowledge of man. By force of time and circumstances, the more man's information and knowledge increases, the more the means of life are perfected, and the more they replace comparatively defective means.

In Islam, no one single means, and no one particular external or material form can be found that has an aspect of 'holiness' in it, so that a Muslim could consider himself constrained to retain that means or form for ever.

Islam did not specify that tailoring, weaving, agriculture, transport, war or any other activity should be carried out using such and such. means, so that when that means became obsolete due to an advance in knowledge there could arise an antagonism and a conflict between science and the dictates of Islam. Neither has Islam given any special instructions regarding shoes or clothes, or determined that a building should be made with stone or steel, or that particular kinds of apparatus should be manufactured and distributed.

This is one of the reasons why the job of conforming this religion to temporal progress has been easy.

A permanent law for a permanent requirement, and a variable law for a varying requirement :

2. One of the other peculiarities of the Islamic religion which has much importance is that it has ordained permanent laws for permanent human requirements, and has maintained a changing attitude towards varying requirements. Some requirements, which may be personal, individual, general or social, are unchanging and permanent. They are the same for ever. The discipline that human beings maintain in respect of their instinctive urges, and the discipline that they establish for their society is, as a general rule, always the same.

I am conversant with the concept of ethical relativity and with the idea of the relativeness of justice, and I am aware of the fact that there are people who uphold these ideas, therefore, I shall make known my point of view to these people.

Another section of human requirements comprise varying human needs which call for varying and non-permanent laws. Islam has kept in mind a variable position with respect to these varying human needs, by means of linking the varying conditions with invariable and stable principles. These invariable principles create particular auxiliary laws for each changing condition.

I cannot expand upon this point any further in this article except that I shall try to clarify the point in the minds of my respected readers by means of a few examples.

وَأَعِدُّوا لَهُمْ مَا اسْتَطَعْتُمْ مِنْ قُوَّةٍ

And prepare against them whatever force you can. (Qur'ãn, 8:60)

i.e., " O Muslim! Prepare force against the enemy to the furthers possible extent". Apart from this, in the traditions of the Prophet there is a series of commands which has been handed down, and which is collected together in Islamic law under the title of 'horse-racing and archery'. There are commands that you yourself and your sons should learn the arts of horse-riding and archery to a degree of complete proficiency. Horse-riding and archery were a section of the martial arts in those days. It is quite evident that the origin and the basis of the command about horse-riding and archery is the principle: *And prepare against them whatever force you can.* This means that the arrow, the sword, the spear, the bow, the mule and the horse are not fundamental in themselves in the eyes of Islam: the basic point is to be strong enough. The thing that has real importance is that Muslims, in every period of history and in every age, should do their utmost to strengthen them-selves with regard to military and defence forces against the enemy. The necessity of being proficient in archery and horsemanship is an expression in which to cloth the necessity of being powerful. In other words it is the practical or executive form of the latter. The necessity of strength against the enemy is a permanent law which originates from a permanent and constant necessity.

However, the requirement of proficiency in archery and horsemanship is a manifestation of a changing necessity linked to time, and it changes according to the age and the times. With changes in the conditions of civilization, other things such as the preparation of up-to-date weapons, and proficiency and special-ization in their use, take the place of that necessity.

Another example: another social principle has been laid down in the Qur'ãn, which concerns the exchange of wealth. Islam acknowledges an individual's right of ownership. No doubt there are vast differences between what Islam permits in the name of ownership and what is going on in this regard in the capitalist world, but there is no occasion here to discuss these points. The essential condition of an individual's ownership is exchange.

Islam has laid down principles to$_y$ do with exchange, one of which is:

وَلاتَأكُلوا اَموالَكُم بَينَكُم بالبَاطِلِ

***Do not consume your wealth amongst yourselves in vain,* (Qur'ãn, 2:188).**

This means that the property and wealth which passes from one person to another, which leaves the possession of the producer and the person having the prior authority over it and falls to another per-son and then to a third person, should always be in return for lawful profit, which should accrue to the previous owner. The passing of wealth from hand to hand without a return that may be humanly valuable for the owner is prohibited. Islam does not consider ownership as an absolute right of control.

Besides that, it is made clear in the precepts of Islam that the sale and purchase of certain things, including blood and human excrement, is forbidden. Why is that so? For the simple reason that the blood of man or a sheep cannot be put to any useful purpose and cannot be considered a useful commodity and a part of human wealth. The root cause of the prohibition of blood and human excrement is the principle of : *Do not consume your wealth amongst yourselves in vain;* the prohibition of the sale and purchase of these particular things is not the fundamental. The basic thing is that exchange of only those things which are of any human use should take place. The forbidding of the exchange of things like blood and human faeces is merely an example of the prohibition of futile exchanges of wealth. In other words, it is a mere practical expression for the basic principle laid down in the words: *Do not consume your wealth amongst yourselves in vain.* Moreover, if there is no occasion for exchange, no wealth can be appropriated from another in vain and put to use.

This principle is invariable for all times and is based upon a general and constant human necessity, but the fact that blood and human faeces do not constitute wealth and are not exchange-able depends upon the times, the historical period, the level of civi-lization, the change in the conditions and advancement of know-ledge, upon industry and the possibilities of right and profitable

utilization of these things. These factors may bring about alterations in the law.

Another example: Amīr al-mu'minīn 'Ali (a.s.), in the latter years of his life, did not dye his hair in spite of the fact that it had become white. His beard was white as well. Some per-son asked him whether the Prophet had not given a command to dye white hair. He replied, "Yes, he did". The man asked why, then, he did not dye his hair. 'Ali replied that when the Prophet had given these instructions, Muslims were few in number, and amongst them there was a number of old people who used to take part in the battles. When the enemy looked at the ranks of Muslim warriors and saw the white-haired old men, they worked up courage and became self-confident from the fact that their opponents were a lot of old men. The Prophet issued an order that old men should dye their hair so that the enemy should not realize that they were old. Then 'Ali told the man that the Prophet had issued the order when the Muslims had been few in number and it had been necessary that a stratagem like that should be adopted. But in the time of 'Ali, when Islam had spread through-out the land, it was no longer necessary to carry on these practices. Everybody was free to dye or not to dye his hair.

In the view of 'Ali (a.s.) , the commandment of the Prophet that Muslims should dye their hair was not the basic principle. The object of the commandment was something else. This was, so to say, the outer form in which the basic and the fundamental law was clothed. The purpose was to prevent the enemy from being bold in spirit or full of hope.

Islam attaches importance both to the form, the external appearance and the outer "covering", and also to the spirit, the inner meaning and the heart of the matter, but it always seeks that the form and the outward appearance, the "covering", should agree with the spirit and inner meaning, the "heart". It puts a shell round the kernel, and clothing on the body.

The question of change of script :

There is presently under discussion in our country the question of changing the script. This matter requires to be examined closely from the linguistic and literary angle of the Persian language, as well as from the perspective of Islamic principles. From the Islamic perspective this proposition can be dealt with in two ways. Firstly, it is to be seen whether Islam has some particular alphabet; whether it distinguishes between different alphabets; whether Islam considers our present alphabet, which is the Arabic alphabet, its own, and considers other alphabets like the Latin alphabet as foreign alphabets. It is certainly not so. In the eyes of Islam, which is a universal religion, all alphabets are equal.

The other aspect of the proposition concerns the result that the change of alphabet and script would have on Muslim society as regards its being merged into, absorbed and swallowed up by societies alien to it? What would be the result of severing the intimate ties of association of this nation with its cultural heritage, which has, at any rate, written all its Islamic and scientific literature in this very alphabet for as long as fourteen centuries? Apart from that, the question arises as to who suggested this plan for changing the script, and who would enforce it? This is what needs to be investigated.

It does not matter what you wear, as long as you do not imitate slavishly :

People like me are some times confronted by questions that are asked in an attempt to belittle and ridicule. What does the *sharī'ah* say about eating while standing? What about eating with cutlery? Is it forbidden to put on a hat? Is the speaking of a foreign language prohibited?

In reply to these questions I say that Islam did not issue hard and fast orders regarding these matters. Islam did not lay down whether food should be taken with the hand or with a spoon.

Islam has, however, directed that cleanliness be maintained. Regarding shoes, hats and dress, Islam has not specifically mentioned any particular fashion. In the eyes of Islam the English, Japanese and Persian languages are each as good as the others.

However, Islam has said something else. It is forbidden to wilfully destroy a particular speech form. It is forbidden to be intimidated by others. It is forbidden to imitate blindly. It is forbidden to be absorbed and swallowed up by others. It is forbidden to be bewitched by others, like a small animal mesmerized by a snake. It is forbidden to soak up the aberrations and misfortunes of others in the name of "moving with the times". It is forbidden to believe that an Iranian must become bodily, spiritually, inwardly and outwardly a European. It is forbidden to spend a weekend in Europe and then pronounce everything in a French accent.*

The question of *"ahamm wa muhimm"* (that which is more important and that which is significant) :

3. Another aspect which provides Islam with the possibility of adapting to the requirements of the times, is the rational aspect of this religion. Islam has given its followers to understand that all its commands arise from a series of supreme exigencies; and, what is more, Islam has established the degree of importance of these exigencies. This consideration has facilitated the task of knowing the reality of Islam in cases where diverse exigencies find themselves in conflict with each other. Islam has permitted that, in these circumstances, those who are deeply acquainted with Islam should determine the degree of importance of the exigencies, and select the more pressing exigencies, always in accordance with the guidelines set down by Islam itself. The *fuqahã'*

* The actual text speaks of those who pronounce the Persian "r" (rather like a Scottish rolled "r") as if it were "gh" (the French gutteral "r") which was an affectation of Europeanized Iranians. (*tr.*)

(jurisconsults) call this principle *ahamm wa muhimm* (lit. “that which is more important and that which is significant”). Here also I could give many examples, but I shall refrain from doing so.

Laws with the right of ‘veto’:

4. Another consideration which has given this religion the property of mobility and adaptability, and gives it eternal life, is that there is a series of principles and laws incorporated into this religion whose function is to control and harmonize the other laws. The *fuqahã’* call these rules *al-qawã’idu ʿl-ḥãkimah* (governing principles) , such as the principle of *lã ḥaraj* (“no blame”) and *lã ḍarar* (“no harm”)* which have authority throughout *fiqh* (Islamic jurisprudence). The purpose of this series of principles is to control and harmonize the other laws. In fact, Islam has acknowledged these principles as having the right of veto over all laws and precepts. This subject has an extensive history, into which I cannot enter here.

The governing authority :

Besides what has already been mentioned, another series of “nuts and bolts” are also used in the structure of the pure religion of Islam which have endowed it with the property of perpetuity and its position as the last religion. The late Ãyatullãh Nã’īnī and ‘Allãmah Ṭabãṭbã’ī ** have, in this respect, laid great emphasis on the authority which Islam has conferred on a competent Islamic government.

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* The principle of *la haraj* (no blame) is applied when excessive difficulty would occur from the carrying out of an injunction in the *sharī‘ah,* and allows the person concerned not to carry it out. The principle of *la ḍarar* (no harm) applies when the performance of an injunction would result in illness to the person concerned, and likewise allows him or her to abstain from performing it.

** For both these see note p.100

The fundamental of *ijtihãd:**

The Pakistani thinker, Iqbãl, has said that *ijtihãd* is the motive force of Islam. This is, no doubt right, but the main point is the ability of Islam to support *ijtihãd.* If there were anything in the place of Islam, we would see how difficult the task of *ijtihãd* would be. For then, the way to *ijtihãd* would be blocked. The main point is the hidden secrets which have been employed in this amazing divine religion, so that in this way it has been given the property of harmonization with the advance of civilization.

Ibn Sīnã, in his book *ash-Shifã',* sets forth the necessity of *ijtihãd* on the same basis. He says that since temporal conditions change and new problems are continuously coming to the fore, and since, on the other hand, the general principles of Islam are permanent and unchanging, it is necessary that in every age and in every period there should be persons who have complete know-ledge and acquaintance with Islamic matters, and who can be the answerers to the needs of Muslims with attention towards the new problems that come forward in every age.

In the supplement of the Constitutional Law of Iran such an anticipation has also been made, that in every age a body of not less than five *mujtahids* who are also "conversant with the requirements of the times", shall watch over the laws which are passed. The intention of the writers of this clause was that persons who are neither 'reactionary' nor 'ignorant progressivists", who are neither against the advances of the era, nor subservient to or followers of others, should watch over the laws of the State.

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* *ijtihãd is* the exercising of independent judgement in Islamic jurisprudence *(fiqh).* The person who exercises *ijtihãd is* called *a mujtahid.* By his knowledge of religious sciences and by virtue of his moral qualities, he has the right to give new opinions *(fatwã)* on matters pertaining to the *sharī'ah.* A marked difference exists between Sunni Islam and Shi'ite Islam in the matters of *ijtihãd,* since in the former the "gate of *ijtihãd*" has been closed since the 3rd century A.H., while in the latter it is still open.

The point which must be remembered is that *ijtihãd,* as the word really signifies, means specialization and expertise in the science of Islamic affairs. It is not the kind of thing that every educational "drop-out" can claim merely on the basis of having spent a few days in one of the centres of Islamic learning.

In order to specialize in Islamic matters and to be competent to pronounce one's own opinion, entire life-time, provided it is not short, is decidedly not too long. That too with the condition that the person is endowed with the liking for it, a certain powerful genius, and is finally completely graced with the favours of Allãh.

Apart from specialization and *ijtihãd,* certain persons can be recognized as authoritess for their viewpoints and opinions who are at the pinnacle of piety, and knowledge and fear of God. The history of Islam can show persons who, with complete scientific and moral competence, used to tremble like willows when they in-tended to express their opinions.

I apologize to my worthy readers that the diversion in this topic has reached such a great length.

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PART FIVE

THE HUMAN STATUS OF WOMAN IN THE QUR'ÃN

* Islam also observes the principle of human rights for women and men.
* Islam is not against parity of rights between women and men, but it is against them having the same rights.
* Islam has put an end to the practice of looking on women in a derogatory and debasing manner.
* The Qur'ãn has kept a balance in the histories related in it — its heroes are not men alone.
* If women want to share equality of rights with men, they must do away with the idea that they can have the same rights.
* The scholars *('ulama')* of Islam have built the foundation of the philosophy of rights on the explanation of the principle of justice.
* The Proclamation of Human Rights is philosophy not law. It should be given to philosophers for approval not to professional politicians.
* Human dignity, which is the basis of the Proclamation of Human Rights, has been accepted in Islam and the east from a long time ago.
* The western world lowered the possible status of man to its lowest degree, but on the other hand it announced a Proclamation in the name of human rights with a loud fanfare.
* The misfortunes of modern man stem from the fact that he has forgotten his self.
* Human dignity is compatible with eastern, but not with western philosophy.

THE HUMAN STATUS OF WOMAN IN THE QUR’ÃN

As what kind of entity does Islam envisage woman? Does it consider her the equal of man in terms of dignity and the respect accorded to her, or is she thought of as belonging to an inferior species? This is the question which we now wish to answer.

The particular philosophy of Islam concerning family rights:

Islam has a particular philosophy concerning the family rights of men and women which is contrary to what has been going on in the last fourteen centuries and with what is actually happening now. Islam does not believe in one kind of right, one kind of duty and one kind of punishment for both men and women in every instance. It considers one set of rights and duties and punishments more appropriate for men, and one set more appropriate for women. As a result, on some occasions Islam has taken a similar position as regards both women and men, and on other occasions different positions.

Why is that so and what is its basis? Is that why Islam, also, like many other religions, has derogatory views concerning women and has considered woman to be of an inferior species, or does it have some other reasons and another philosophy?

You may have heard repeatedly in the speeches, lectures and writings of the followers of western ideas that they consider Islamic laws concerning dowry, maintenance, divorce and polygyny, and other laws like them, as being contemptuous of, and insulting to, the female sex. In this way they try to create the impression that those provisions only prove that man alone has been favoured.

They say that all the rules and laws in the world before the twentieth century were based upon the notion that man, due to his sex, is a nobler being than woman, and that woman was created simply for the benefit and use of man. Islamic rights also revolve in this same orbit of man’s interest and benefit.

They say that Islam is a religion for men, that it has not acknowledged woman to be a complete human being, and that it has not ordained laws for her which are necessary for a human being. Had Islam gauged woman to be a complete human being, it would not have provided for polygyny, it would not have given the right of divorce to man, it would not have made the witnessing of two women equivalent to that of one man, it would not have given leadership of the family to the husband, it would not have made a woman’s inheritance one half of the inheritance of a man, it would not have countenanced that a woman be ‘priced’ in the name of a dowry, it would not have provided for her economic and social independence, and it would not have made her a ‘pensioner’ of man who is obliged to ‘keep’ her. From the aforesaid things, they say, it is inferred that Islam has humiliating views about woman, and has taken her to be just a means to procreating more people, and a necessary prerequisite for that. They add that although Islam is a religion of equality and has maintained real equality in other situations, in the case of woman and man it did not observe it.

They say that Islam has provided discriminative and preferential rights for men. If it did not have in view discriminative and preferential rights for men, it would not have ordained the above laws.

If we resolve the argument of these gentlemen into an Aristotelean logical pattern, it would have the following form :

If Islam had considered woman a complete human being it would have ordained equal and similar rights for her, but it has not ordained equal and similar rights for her. Therefore, it does not consider a woman a complete human being.

Equality or identicalness ?

The basis point which is used in these arguments is that the necessary result of men and women’s sharing in human dignity and honour is that their rights should be the same-identical. Now, the thing on which, philosophically speaking, we should put our finger is to determine exactly what is the necessary result of man and woman’s sharing in human dignity. Is the necessary conclusion that each of them should have rights equivalent to the other, so that there should be no privilege or preference in favour of either of them, or is it necessary that the rights of man and woman, besides having equivalence and parity, should also be exactly the same, and that there should be no division whatsoever of work and duty. No doubt the sharing of man and woman in human dignity and their equality as human beings demands their having equal human rights, but how can there be identicalness of rights?

If we can begin to put aside the imitation and blind following of western philosophy, and allow ourselves to think and ponder over the philosophical ideas and opinions which have come to us from them, we must see firstly whether identicalness of rights is or is not necessary for equality of rights. Equality is different from identicalness. Equality means parity and equitableness,

and identicalness means that they are exactly the same. It is possible that a father distribute his wealth equally and equitably among his sons but he may not distribute it identically. For example, it is possible that a father has different kinds of wealth: he may own a commercial firm, some agricultural land and also some real estate; but, due to his having examined his sons and found different talents among them, for example, he may have found that one of them had a gift for commercial affairs, and that the second had ability in agriculture, and the third had the capability to manage real estate. When he comes to distribute his wealth amongst his sons in his life-time, bearing in mind that he must give equally to his sons in terms of the value of the property and that there should be no preference nor discrimination, he bequeaths his wealth according to the talents which he has found in them.

Quantity is different from quality. Equality is different from being exactly the same. What is certain is that Islam has not considered there to be identicalness or exact similarity of rights between men and women, but it has never believed in preference and discrimination in favour of men as opposed to women. Islam has also observed the principle of equality between men and women. Islam is not against the equality of men and women, but it does not agree with the identicalness of their rights.

The words “equality” and “legality” have earned a kind of sanctity because they embrace the meaning of equivalence and absence of discrimination. These words are attractive and draw respect from listeners, specially when these words are joined to the word “rights “.

“Equality of rights” — how beautiful and sacred is this combination of words! Can there be anyone with a conscience and an innate moral sense, who does not revere these two words?

But why is it that we who were once the standard bearers of knowledge, philosophy and logic, have come to such a position

that others want to impose their opinions on us concerning the identicalness of the rights of men and women in the sacred name of equality of rights.

It is exactly like someone who wants to sell boiled beet-roots and calls them pears.

What is certain is that Islam has not granted the same rights to men and women in everything, in the same way as it has not imposed the same duties and punishment on both of them on all occasions. However, is the sum total of all the rights that have been established for women less in value than the rights that have been granted to men? Certainly not, as we shall prove.

Here a second question arises. Why has Islam granted dissimilar rights to men and women in certain instances? Why did it not allow the same rights for both of them? Would it not have been better for the rights of men and women to have been both equal and identical, or is it preferable that the rights should be only equal but not the same? To study this point thoroughly, it is necessary that we should discuss it in three parts:

1. The view of Islam concerning the human status of woman from the point of view of creation.

2. What is the reason for the differences which exist in the creation of man and woman. Are these differences the cause of there being dissimilarities in their natural rights, or not?

3. The basic philosophy behind the differences that exist in Islamic law for men and women, which, in certain respects, place them in different positions. Are these philosophical reasons still justifiable and do they still hold good, or not ?

The status of woman in the world-view of Islam:

As for the first part, the holy Qur'ãn is not only a collection of laws. It does not contain merely a series of dry commands and laws without comment. It contains both laws and history, both exhortation and the interpretation of creation, and countless other subjects. Just as the Qur'ãn lays down rules of action in the form of law on some occasions, so it also comments upon existence and being. It explains the secrets of the creation of the earth and the sky, plants, animals and mankind, and the secret of life and death, greatness and suffering, growth and decline, wealth and poverty.

The Qur'ãn is not a treatise on philosophy, but it has explicitly expressed its views concerning the three basic topics of philosophy: the universe, mankind and society. Not only does the Qur'ãn teach its believers laws, and not only does it give exhortation and advice, but it also endows its followers with a special way of thinking, a particular world-view, by its interpretation of creation. The foundation of all Islamic commandments concerning social matters, for example, ownership, government, family rights, and so forth, is this same explanation which the Qur'ãn gives of creation and the things of the world.

One of the matters that have been commented on in the holy Qur'ãn is the subject of the creation of women and men. The Qur'ãn was not silent on this matter, and did not provide an opportunity for those who talk nonsense to put forth their own philosophies for laws concerning men and women, and then to accuse Islam of having a derogatory attitude towards women on the strength of their own theories. Islam has already laid down its views regarding women.

If we want to see what the view of the Qur'ãn is regarding the creation of woman and man, it is necessary to have a look at the question of their creation as it is treated in the Books of other religions. The Qur'ãn also did not remain silent

on this subject. We should see whether the Qur'ãn considers woman and man to be of one essence or two. In other words, whether woman and man have one nature and essence or two. The Qur'ãn most explicitly lays down in several *ãyãt* (verses) that : *We created women from the nature of man and from an essence the same as the essence of man.* Concerning the first Adam, the Qur'ãn says: *Who created you from one single soul, and created from it its mate,* (Qur'ãn, 4:1). With regard to all men, the Qur'ãn says in several places: *Allãh created your mate from your own kind.*

There is no trace in the Qur'ãn of what is found in some sacred books: that woman was created out of an inferior stock to that of man, that they gave woman the status of a parasite and of an inferior, or that the mate of the first Adam was created from one of the left-side parts of his body. Besides that, in Islam there is no derogatory view about woman as regards her nature and innate constitution.

Another of the contemptuous views that existed in the past and which have left their undesirable effects in world literature is that woman is the origin of sin, and that her existence is the source of sin and temptation. Woman is a small devil. They say in every sin or crime committed by man, woman had her hand. According to them man in himself is innocent of any sin: it is woman who drags him towards sin. They say Satan cannot find his way to man's being directly : it is only through woman that he can deceives man. Satan tempts woman, and woman tempts man. They say the first Adam, who was deceived by Satan and turned out of the Paradise of happiness, was deceived through woman. Satan tempted Eve, and Eve tempted Adam.

The Qur'ãn relates the story of the Paradise of Adam, but never says that Satan or a snake tempted Eve and she tempted Adam. Neither does the Qur'ãn describe Eve as the main person responsible, nor does it exonerate her from the sin. The Qur'ãn says: *0 Adam, inherit, thou and thy wife, the Garden, and*

eat of where you will (7:19). Wherever the Qur'ãn describes the matter of Satan's tempting, it uses the pronouns in the form of the dual (i.e., referring to two persons). It says: فَوَسوَسَ لَـهُما الشّـَيطانُ *Satan tempted both of them,* (7:20). فَدَلّـيهُمَا بِـغُرورٍ *So he led them both on by delusion,* (7:22) وَقاسَـمَهُما إنـّى لكُما لَـمِنَ النـّاصِحين *And he swore to both of them, "Truly, I am for you both a sincere adviser."* (7:21)

In this way the Qur'ãn strongly refutes the misconception which was prevalent at that time and which is still found in certain quarters and among certain people of this world, and exhonerates the female sex from the accusation that woman is the source of temptation and sin, and is half a devil.

Another contemptuous view which exists concerning woman is in the field of her spiritual ability. They say: "A woman cannot go to Heaven. A woman cannot traverse the spiritual and divine stages of enlightenment. A woman cannot attain proximity to God as can a man." The Qur'ãn, on the other hand, has made it explicitly clear in a large number of verses that reward in the life after death and nearness to God do not depend upon sex, but upon faith and deeds, whether they be of a woman or a man. For every great and pious man, the Qur'ãn mentions a great and pious woman alongside him. The wives of Adam and Ibrahim (Abraham) and the mothers of Mũsã (Moses) and 'Īsã (Jesus) are mentioned with great esteem. Although the Qur'ãn refers to the wives of Nũḥ (Noah) and Lũṭ (Lot) as being unworthy of their husbands, it does not ignore the wife of Fir'awn (Pharaoh) as a woman of distinction under the control of a detestable man. It can be said that the Qur'ãn purposely seeks to keep a balance in its histories and the leading role in them is not confined to men.

About the mother of Mũsã, the Qur'ãn says: "*So we revealed to Moses' mother, "Suckle him, then, when thou fearest for him, cast him into the water, and do not fear, neither sorrow, for We shall return him to thee."* (28:7)

About Maryam (Mary), the mother of 'Īsã, the Qur'ãn says that she had attained such an elevated spiritual degree that the angels used to visit her in her prayer-niche and converse with her. Sustenance was supplied to her from an invisible source. She had attained so high a position of Divine favour that it completely astounded the prophet of that time, and exceeded his own degree. Zakariyya (the prophet) was dumb-founded when he looked upon her.

In the history of Islam itself there are many pious and distinguished women. There can be few men who are able to reach the high status of Khadījah,* and no man except the Holy Prophet himself and 'Ali could attain the status of az-Zahrã'.** az-Zahrã' excelled her sons, the Imãms, and all the prophets as well, excepting the Seal of the Prophet Muhammad (s.a.w.a.). Islam does not make any difference between man and woman in the journey from this world towards al-Haqq (the Truth, i.e., towards God). The only difference that Islam makes is in the journey from al-Haqq to this world, in returning to mankind and bearing the prophetic message, and here it recognizes man as being more suitable.

Another derogatory view that was held was in connection with sexual abstention and the sacredness of being single and celibate. As we know, in some religions, sexual intercourse is in its essence unclean. According to the followers of these religions only those who live all their life in celibacy can attain the stations of the spirit. One of the world's well-known religious leaders said: "Root out the tree of marriage with the spade of virginity."

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* Khadījah was the Holy Prophet's first and most dearly beloved wife. She was the first person to believe in his prophghood, and she proved a firm support for him in the first difficult years of his mission. (tr.)

* Fãṭimatu 'z-Zahrã' was the Holy Prophet's daughter, the wife of 'Ali, and the mother of the second and third Imãms, Ḥasan and Ḥusayn. She is included by the Shī'ah, together with the Holy Prophet and the twelve Imãms, among the fourteen immaculate ones, free from sin. (tr.)

The same religious leaders allow marriage only as one evil to ward off a greater evil. In other words they maintain that, as the majority of people are unable to endure the hardship of remaining celibate and may loose self-control and thus become victims of perversion, indulging in sexual contact with numerous women, it is better that they should marry and not have sexual relations with more than one woman. The root cause of sexual abstention and celibacy is a feeling of aversion against the female sex. These people consider love of women to be one of the great moral depravities.

Islam has combatted fiercely against this superstition. It considers marriage to be sacred and celibacy to be impure. Islam considers love of women to be a part of prophetic morality, and

says: مِن اَخلاق الاَنبياءِ حُبُّ النِّساءِ "Love of women is of themorality of the prophets." The last Prophet used to say: "Three things are dear to me: perfume, women and prayer."

Bertrand Russell says: * "In all codes of moral conduct there appears a kind of aversion to sexual relations except in Islam. Islam has ordained regulations and limitations with regard to this relationship for social reasons, but it has never considered it an abominable and unclean matter."

Another derogatory opinion held regarding women was that she is only a means for bringing man into existence, and that she was created for man.

These ideas can never be found in Islam. Islam most explicitly explains the basis of the final cause, it says quite clearly that the earth and the sky, the clouds and the winds, plants and animals have all been created for man. But it never says that woman was created for man. Islam says that man and woman were each created for the other: هُنَّ لباسٌ لَكم و اَنتُم لباسٌ لَهُنَّ

* Translated from the Persian, reference untraced. (tr.)

They are a vestment for you (man) *and you are a vestment for them,* (Qur’ãn, 2:187). If the Qur’ãn considered woman to be a means of making men and something created for them, it would certainly have kept this fact in view in its laws. As Islam, in its explanation of creation, does not have this opinion and does not consider woman to be a parasite on man’s existence, there is no trace or reflection of this idea in its special precepts regarding man and woman.

Another of the derogatory views held in the past was that women were considered an unavoidable and necessary evil. Many men, in spite of all the gains and advantages they had derived from women, regarded them contemptuously and considered them to be a source of misfortune and misery. The holy Qur’ãn makes a special mention of the fact that woman is a blessing for man and is a source of solace and comfort for his heart.

Yet another derogatory view was that woman played a very insignificant part in bringing offspring into the world. Arabs of the pre-Islamic age, and certain other peoples, considered women to be only a repository for the sperm of the man, which, according to them, was the real seed of the child, and they said that her part was to keep that seed safe and to nourish it. The Qur’ãn says in several verses that: *“You were created from man and woman.”* In other verses, which are analysed in the commentaries, the final answer has been given in a similar way.

From what has been said above, it is clear that both from a philosophical point of view, as well as from its explanation of the nature of creation, Islam does not hold any derogatory ideas concerning women; rather, it has seen to it that all the above-mentioned derogatory views are discarded. Now it is appropriate to examine why there is an absence of identicalness in the rights of men and women.

* * * * *

EQUALITY, BUT NOT UNIFORMITY

We said that Islam has a special philosophy concerning the relations and rights of men and women within the family which differs from that which was current fourteen centuries ago and does not conform either with what is accepted in the world of today.

We have already explained that according to the Islamic view it is never a matter of dispute as to whether a man and a woman are equal as human beings or not, and as to whether their family rights should or should not be equal in value with each other. According to Islam, a woman and a man are both human beings and both are apportioned equal rights.

That which has been kept in view in Islam is that woman and man, on the basis of the very fact that one is woman and the other is a man, are not identical with each other in many respects. The world is not exactly alike for both of them, and their natures and dispositions were not intended to be the same. Eventually this requires that in very many rights, duties and punishments they should not have an identical placing. In the western world they are now attempting to create uniformity and identicalness in laws, regulations, rights and functions between women and men, while ignoring the innate and natural differences. It is here that the difference between the outlook of Islam and that of western systems is to be found. Thus the dispute between, on the one hand, those sections of the people who support Islamic

rights and, on the other hand, those who support western systems is about the identicalness and exact similarity of the rights of women and men, and not about equality of rights. ‘Equality of rights’ is a counterfeit label which the followers of the west have stuck on as a souvenir of the west.

In my writings, conferences and lectures, I always avoid the use of this counterfeit label, and the use of this phrase, which comes to mean nothing but uniformity and identicalness of rights for women and men, in place of genuine equality of rights.

I am not saying that nowhere in the world did or does the claim for equality of rights for women and men have any meaning, nor am I saying that every past and present law in the world concerning the rights of men and women was passed on the basis of equality of worth and estimation and that it is just identicalness which was eliminated.

No, I have no such claim. Europe, before the twentieth century is the best evidence. In Europe before the twentieth century, woman legally as well as practically lacked all human rights. Neither did she have rights equal to those of man nor the same as his. In the sudden development of the movement which sprang up in less than one century in the name of woman and for woman, she acquired rights almost the same as those of man. However, considering her natural build and her physical and spiritual needs, she never acquired rights equal to those of man. For if woman wishes to acquire rights equal to the rights of man and happiness equal to the happiness of man, the only way to get that end is for her to forget about an identicalness of rights with man and have faith in rights suitable for herself. Only in this way can unity and real sincerity between man and woman be achieved, and only then will woman obtain happiness equal to or better than man’s. Man then, out of sincerity and without any derogatory thoughts, will be ready to concede to her equal and at times better rights than their own.

Similarly, I am not at all claiming that the rights that have in practice been the lot of women in our seemingly Islamic society are equal in value to the rights that men have had. I have many times said that it is essential to hold a thorough inquiry into the plight of women, and that many rights that have been given to women by Islam and have in practice been ignored should be restored to them; but not that we should blindly follow and imitate the ways of the west, which have brought thousands of misfortunes for them, and give a pretty name to an erroneous principle and thus encumber women who already have misfortunes of the eastern type with misfortunes of the western type as well. Our point of view is that dissimilarity in the rights of man and woman should be observed to whatever extent nature has differently moulded and created them. This is in better accord with justice and with natural rights; and will both secure good will in the family and also result in the better development of society.

It must be completely understood that we claim that justice and the natural and human rights of man and woman call for dissimilarity in certain rights. Thus, our discussion has a completely philosophical orientation: it is linked to the philosophy of rights and linked with a principle which is called the principle of justice, which is one of the vital pillars of Islamic theology and jurisprudence. The principle of justice is the same fundamental principle which brought into existence the rule of the harmony of reason and religious law in Islam. It means that according to Islamic jurisprudence — or at least Shi‘ite jurisprudence — if it can be established that justice demands that a particular precept should be such-and-such and not something else, then if it is something else it will be an iniquity and against justice; thus we are obliged to say that the ruling of religious law is what reason and justice tell. us it should be. For Islamic religious law, according to the fundamental principle which it has itself taught, can never leave the axis of justice and intrinsic, natural rights.

By expounding and elucidating the underlying meaning of justice, Islamic scholars have laid upon it the foundation of the philosophy

of rights. As a result of the occurrence of regret-table historical events they could not continue the work they had started. At any rate, preoccupation with the idea of human rights and the principle of justice as being something essential, in accordance with the order of things and beyond conventional law, was first of all propounded and put forward by the Muslims. They laid the foundation of the rights that are both natural and also required by intellectual considerations.

However, it turned out that Islamic scholars could not carry on that work, and, after a gap of about eight centuries, European thinkers and philosophers continued it, and took upon themselves the credit for that task. On the one hand, they worked out social, political and economic philosophies, and, on the other hand, they informed individuals, societies and nations and explained to them the value of life and their rights as human beings. They started movements, instigated revolutions, and changed the face of the world.

In my opinion, besides historical reasons, psychological and geographical reasons also played their part in creating this situation whereby the Islamic east did not follow up these rights which are intellectually indispensable and whose foundations they had laid. This is one of the differences in mentality between the east and the west, that the east has a tendency towards ethical thinking, while the west is inclined towards the idea of rights. The east is under the spell of morality, and the west is in love with rights. The easterner by virtue of his eastern nature conceives of his humanity as consisting of behaving with kindness and toleration, in being friendly towards his fellow men and in conducting himself with generosity towards them. On the other hand, a westerner takes pride in the realization of his rights, and in safeguarding them, and will not allow anybody to intrude upon the sacred territory of his rights.

Humanity needs ethics as well as rights. It is linked to rights as well as to morals, and neither of the two, rights or morals, is in itself, the criterion of humanity.

The sacred religion of Islam has the great privilege of having approved both rights and ethics. In Islam, as was mentioned before, sincerity and right action in the moral sense is considered a virtue; and knowledge of rights and defending them is also considered a virtue and to be human. This matter has details which cannot be gone into here.

However, the particular mentality of the east set to work. In spite of the fact that in the beginning the concept of rights and the insistence on morality had both been acquired from Islam, the east gradually let go of rights and focussed its attention on morals.

Our point is that the problem with which we are at present confronted is a problem of rights, a philosophical and intellectual problem, a problem based upon arguments and reasoning. It is closely connected with reality of justice and the nature of rights. Justice and rights were in existence before any laws were passed in the world, so the enacting of a law cannot change the reality of justice and the human rights of mankind.

Montesquieu said: "Before man created laws there seem to have been relations founded on law and upon justice between creatures. The existence of these relations itself was the cause of the creation of laws. If we say that apart from the actual first laws, consisting of orders and prohibitions, nothing else just or unjust exist, it is as if we say that before man drew a circle, the radii of that circle were not all equal."*

Herbert Spencer said: "Justice is associated, not with the sentiments, but with something else which is the natural rights of individuals. For justice to have external reality it is necessary to have regard for rights and innate differences" *

The European philosophers who upheld, and still do hold this view, are in large number. The manifestos and proclamation

* Both translated from the Persian. Originals untraced. (tr.)

that were drawn up, and the material that was incorporated under the heading of Human Rights has as its source this very theory of natural rights. In other words, it was the theory of natural and innate rights which reappeared in the form of the Proclamation of Human Rights.

Once again, what Montesquieu, Spencer and others have said concerning justice is, as we know, the very same thing that Islamic theologians have said concerning the inborn intellectual capacity to determine ‘right’ and ‘wrong’ and the real meanings of justice. Amongst Islamic scholars there were some individuals who refused to accept the idea of instinctive rights and considered justice as something conventional. Amongst Europeans also such a belief existed. The Englishman Hobbes refused to accept justice as having real existence.

The Declaration of Human Rights is philosophy and not law:

The absurd thing is that they say that the text of the Declaration of Human Rights has been approved by the two Houses (of the Iranian Parliament) , and, as the equality of rights for men and women is included in the text of the Declaration, so, under the law approved by the two Houses, men and women should have equal rights. As if the text of the Declaration of Human Rights is something which is within the competence of the two Houses to approve of or reject. The contents of the Declaration of Human Rights is not the kind of thing which can be put up for the legislative assemblies of countries to approve of or reject.

The Declaration of Human Rights deals with the innate undeniable and unrelinquishable rights of mankind. It refers to rights which, as the Declaration claimed, are prerequisites of man’s humanity, and which the hand of the All-mighty Creator established for them. In other words, the Source and Power which provided men with intellect, volition and human dignity also bestowed upon man, as the Declaration claims, human rights.

Human beings cannot make the contents of the Declaration of Human Rights law for themselves, and neither can they cancel or depart from those rights on their own. Then what is the sense in saying that it had been approved by the two Houses and the legislative power ?

The Declaration of Human Rights is philosophy and not law. It should be presented to the philosophers for their approbation and not for the approval of members of parliaments. The two legislative Houses cannot determine philosophy and logic for people by taking a vote. If legislative work is to proceed like this, then they should take the Einstein's Theory of Relativity to Parliament and present it to the members to have it approved by them. The hypothesis that there is life on other planets should also be sent for their approval. The laws of nature cannot be approved or rejected just like conventional laws. It is as if we were to say that both the Houses of Parliament have passed an act saying that if we graft a pear onto an apple, the graft will be successful; but that if it is grafted onto a mulberry it will not.

If such a declaration is issued on behalf of a group of persons who are themselves thinkers and philosophers, the nations should entrust it to the hands of their philosophers and campaigners for rights. If in the opinion of the philosophers and thinkers of that particular community the matter can be confirmed, then it is the duty of all the members of that community to consider what they say as a truth above law. It is binding upon the legislative power also not to enact any law against what they say.

As for the other nations, they are not obliged to accept any declaration until it has been established and discovered in their eyes that such rights exist in the same state in nature. Besides this, these questions are not experimental matters which require equipment, laboratories and so forth which Europeans have but others do not. It is not a question of breaking the atom, the secret of which, and the necessary equipment for which are with a limited number of persons; it is philosophy and logic, and for this the tools

are the brain, the intellect and the power of reasoning.

Even if other nations are obliged to follow others in questions of philosophy and logic, because they do not consider themselves competent in philosophical thinking, we Iranians should not think like that. In the past we reached a high standard of ability and showed our worth in philosophic and logical investigations. Why should we follow others in their solutions to philosophic problems?

It is strange that Islamic thinkers gave so much importance to the question of justice and the essential rights of man when it arose that, without any hesitation, in accordance with the law of the harmony between reason and Islamic law, they used to say that the law of Islam was indeed this. That is to say they did not see the necessity of ancillary corroboration by an Islamic law. Today we have been reduced to the level where we seek confirmation for these matters in approval by members of Parliament.

Philosophy cannot be proved by questionnaires :

More ludicrous than this is that when we want to make a study regarding the human rights of women, we refer the matter to young boys and girls, print questionnaires and try to find out by the way in which they are filled in what human rights are and whether the human rights of women and men are the same or different.

Anyhow, we are seeking to make a study in a scientific and philosophic manner about the human rights of women on the basis of intrinsic human rights, and we want to see whether those same principles which require that human beings, as a general rule, have a series of natural and God-given rights, also affirm that women and men should have the same kind of rights or not. So, I request the scalars, thinkers and jurists of this country, who are the only persons who really matter and should set forth their opinions in such matters as this, to look into our arguments critically. I would be highly obliged if they gave their opinions together with their reasons for or against what I have written.

In order to study this point, it is necessary that we should firstly look at the basis and the roots of human rights, and then consider specifically the rights of men and women.

It would not be out of place to briefly refer in the first place to the movements in the present age to do with rights which culminated in the call for equality of rights for men and women.

A glance at the history of women's rights in Europe :

In Europe, from the seventeenth century onwards, voices began to be raised in the name of human rights. Writers and thinkers of the 17th and 18th century propagated their thoughts in respect of the natural, inherent and undeniable rights of man with wonderful perseverance. Jean- Jacques Rousseau, Voltaire and Montesquieu belong to this group of thinkers and writers. The first practical result of the propagation of the ideas of the supporters of natural human rights occurred when in England a protracted struggle took place between the rulers and the ruled. In 1688 A.D. the people succeeded in moving for some of their social and political rights according to a manifesto of rights,* and had them restored.

Another practical result of the propagation of these ideas was manifested in the War of Independence of America against England. Thirteen British Colonies in North America, due to the strains and difficulties imposed upon them, rose in disobedience and rebellion and at last gained their independence.

In the year 1776 A.D. a Congress was formed in Philadelphia which declared its complete independence and published

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* The author refers to the Persian translation of Albert Mallet's *Nouvelle Histoire Universelle* where mention is made of the "Declaration of Rights" presented to William and Mary of Orange in the presence of the entire British Parliament on 13th February 1689. (tr.)

a document* to that effect. In the introduction to that document they wrote, "that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed."

However, what is well-known in the world under the name of the 'Declaration of Human Rights' is that document which was issued after the Great French Revolution. This declaration** consists of a series of general principles which are prefixed to the French Constitution, and it is considered an inseparable part of it. This proclamation consists of an introduction and seventeen clauses. The first section states that "Men are born, and always continue, free and equal in respect of their rights."

In the 19th century new changes and new thoughts occurred in the field of economics, sociology and politics which culminated in the advent of socialism and the resultant requirement of the allocation of a share of profits to the working class, and the transfer of government from the hands of the capitalists to the workers.

Till the early part of the 20th century, all the controversies concerning human rights were connected entirely with the rights of the people before their governments, or with rights of the proletariat and the working class before the employers.

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* Actually called "The unanimous Declaration of the thirteen United States of America", made on 4th July 1776. (tr.)

* The "Declaration of the Rights of Man and of Citizens." This was promulgated by the French National Assembly as a preamble to the constitution in 1789, and subsequently popularized by Thomas Paine's *"The Rights of Man"*. (tr.)

It was in the 20th century for the first time that the question of the rights of woman before man came to the fore. Britain, which is considered to be the oldest democratic country, only acknowledged equal rights for men and women in the beginning of the 20th century. The United States of America, in spite of their generally admitting the rights of all human beings in the 18th century in their Declaration of Independence, passed the act giving equal political rights to men and women in the year 1920 and France also approved this matter in the 20th century.

Anyhow, in the 20th century, many groups all over the world favoured a profound change in the relations of men and women concerning their rights and duties. According to these people, the change and transformation in the relations of peoples with their governments, and in the relations of the labour class and the proletariat with the employers and the capitalists did not suffice for social justice, so long as the relations of rights of men and women were not reformed.

Accordingly, a Universal Declaration of Human Rights was issued for the first time after the Second World War in 1948* on behalf of the United Nations Organization. In its introduction it was stipulated :

Whereas the people of the United Nations have once again proclaimed their belief in human rights and the status and worth of an individual human being and equality of the rights of men and women . . .

The crisis of changes due to mechanization in the 19th and the 20th century and the eventual unfortunate condition of craftsmen, especially women, exaggerated the situation all the more, demanding that the matter of the rights of women should be

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* The Universal Declaration of Human Rights was adopted and proclaimed by the General Assembly of the United Nations on 10th December 1948. (tr.)

especially attended to. In his *Nouvelle Histoire Universelle* (vol.4, p.387) Albert Malet writes: “Since the State no longer interfered in any way between the employers and the workers, except to forbid the latter to group together and strike, the employers were able to enforce a real ‘economic despotism’ . . . in France, in 1840, in the Ronen region, cotton mill workers laboured up to 16—17 hours a day . . . The exploitation for work of women and children was particular obnoxious. . . mortality in the working districts was horrifying.”

This is a short and cursory history of the human rights movement in Europe. As we know, all the matters contained in the Declarations of Human Rights, which have novelty for the Europeans, were anticipated fourteen century ago in Islam. Some Arab and Iranian scholars have compared (the position of) Islam with these declarations in their books. Of course, there are differences in some parts between what the declarations say and what Islam has said, and this is itself an absorbing and interesting matter. One of these differences is the problem of the rights of men and women, in which Islam approves of equality, but does not agree with identicalness, uniformity and exact similarity.

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THE DIGNITY AND THE RIGHTS OF HUMAN BEINGS

"Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

"**Whereas** disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

"Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

"**Whereas** it is essential to promote the development of friendly relations between nations,

"**Whereas** the people of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

"Whereas . . .

"Now, Therefore,

THE GENERAL ASSEMBLY

proclaims

"This universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction."

The splendid sentences above form the preamble to the Universal Declaration of Human Rights. This is the preamble to the charter of which it has been said it is "the greatest blessing ever to come to the lot of the world of humanity in support of human rights unto this day".

Every sentence and every part of it is numbered and, as I pointed out in the preceding article, is derived from the ideas of several centuries of world philosophers who sought freedom and recognized human rights.

Important points in the preamble to the Declaration of Human Rights :

This Declaration was drawn up in thirty sections. We shall ignore the fact that some matters are repeated in some of the articles or at least that the mention of certain matter in one section makes another section redundant, and that some of the articles of the Declaration could have been divided up into several smaller articles.

The important points of the preamble which should be noted are :

1. All human beings benefit from a single kind of dignity, honour and inherent, inalienable rights.

2. Dignity, honour and inherent human rights are universal and include all human individuals with no discrimination or distinction, white and black, tall and short, woman and man, all alike share in this benefit. Just as in a family an individual member cannot claim to be of a nobler and higher origin than the other members of the family, so, in the same way, all human individuals are the members of a large family and organs of one body and are the same in their dignity. No-one can consider himself to be of nobler birth than any other individual.

3. The basis of freedom, peace and justice is that all individuals, from the depth of their conscience, have belief and faith in the reality of the equal dignity and inherent honour of all human beings.

This Declaration wants to claim that it has discovered that the source of all the troubles that individual human beings create for each other, and the basic cause of the breaking out of wars, of the atrocities, transgressions and acts of savagery which individuals and nations inflict on one another, is the non-recognition of the dignity and inherent honour of human beings. This non-recognition by one group compels the opposing group to explode, and it is thus that peace and security is endangered.

4. The highest aspiration which everyone must strive to attain is the advent of a world where freedom of conviction, security and material prosperity are perfectly attained. Suppression of beliefs, fear and poverty should be uprooted. The thirty articles of the Declaration were drawn up to attain this ideal.

5. Belief in the inherent dignity of human beings, and regard for their undeniable and inalienable rights should be gradually created by teaching and education in all individuals.

The dignity and respect of man :

Since the Declaration of Human Rights is based on the honour, freedom and equality of human beings, and was created in order to restore human rights, it should be met with due honour and respect by every conscientious person. We people of the east have been pleading in favour of the worth, position and honour of the human being for a long time; as I mentioned in the preceding article, human beings as such, together with their rights, their freedom and equality are given the utmost attention, respect and importance. Those who wrote and drew up this Declaration, and likewise the philosophers from whom the writers of this Declaration derived, in fact, their inspiration, deserve our tribute and regards. Nevertheless, because this Declaration is a philosophical matter and is drawn up by human beings and not by angels, and because it is the conclusions of a group of human individuals, every thinker has the right to scrutinize it critically, and, if he should find certain weak points in it, to point them out.

This Declaration is not free from weak points, however, we shall not refer here to the weak points, preferring as we do, to refer to the strong points only.

The basis of this Declaration is the 'inherent dignity' of the human being. According to this Declaration, a human being derives his claim to a series of rights and freedoms on the basis of a general dignity and honour that is special to him. Other animals do not have and enjoy these rights and freedoms, because they lack that dignity and honour. This is the strong point of this Declaration.

The decline and fall of the human being in western philosophy:

Here, once again, we come across an old problem in philosophy. The value and worth of the human being; the position and dignity of the human being in comparison with all other creatures — what, we should ask, is that innate, inherent dignity of the human

human being which distinguishes him from a horse, a cow, a sheep or a pigeon ?

Here it is that a clear contradiction is observed between the basis of the Declaration of Human Rights, on the one hand, and the value and worth of humanity in western philosophy, on the other.

In western philosophy, mankind has for long been with-out worth and value. The previous observations that were made concerning human beings and their distinguished position had their source and origin entirely in the east. Today in most western philosophical systems, these observations are belittled and ridiculed.

A human being, in the eyes of the west has been degraded to the level of a machine. His spirit and nobility is denied. Belief in a final cause and a plan or design for nature is considered a reactionary idea.

In the west, the belief in mankind being the noblest of creatures could not last for long, for the western belief was based on the belief that all other creatures were dependent on and under the domination of human beings, and this derived from the ancient Ptolemaic theory of the earth and the heavens that the earth was the centre and all the heavenly bodies revolved around it. Thus, when this belief was abandoned, there were no grounds left for considering mankind as the noblest of creatures. In the eyes of the west, all such thoughts were mere self- aggrandizements to which human beings were the victims of the past. A human being today is courteous, obliging and modest and considers himself to be like other objects, nothing more than a handful of dust. From dust he comes and to dust he shall return, and it is here that he will finally come to and end.

A westerner, in his humility, does not consider the soul to be an independent form of human existence, and does not consider it to

have the capacity of actual and real existence. He does not believe in there being any difference between himself and a plant or an animal in this respect. A westerner does not consider there to be any difference between the thought and actions of the soul and the heat generated from coal, as far as its entity and essence are concerned. He considers all of them to be manifestations of matter and energy. In the eyes of the west, the field of life for all living beings, including mankind, is the bloody battle-field which gave birth to them. The actual, ultimate controller of the life of living beings, including mankind, is the basic struggle for survival. Man always struggle to save himself in this battle. Justice, virtue, cooperation, benevolence and all other moral and human values are all products of this fundamental struggle for existence. Man has constructed these concepts in order to make his own position secure.

According to some influential western philosophers, a human being is a machine, under the fundamental control of nothing but financial interests. Religion, morals, philosophy, science, literature and all the arts are all built on the foundation of the manner of production, sharing and distribution of wealth. All these things are manifestations of the economic aspects of man's life.

But no, this is all too glorified for man. The real motivating and stimulating factors in all human actions are innate sexual drives. Morals, philosophy, science, religion and art, all manifestations of humanity are melted down and reshaped as the action of the sexuality of man's being.

What is difficult to understand is that if we decide that we should deny the purposefulness of creation, and believe that nature quite blindly proceeds on its own course; if the only law which guarantees the life of the various species of living creatures is the struggle for survival, the selection of the fittest and nothing but chance; if the survival and existence of a human being is the pro-duct of accidental change, devoid of any purpose, merely a chain of unnatural acts over a few million years, which his forefathers

permitted with other species, and which resulted in him having the form he has today, if it is decided to believe that man is an example of the machines which he now manufactures himself with his own hand, if it is decided that belief in the spirit, its fundamentality and its permanence is, as it is considered to be, a sort of egotism or self-conceit, or an exaggeration by man about himself, if the real activating and stimulating factors in all human actions are economic or sexual drives or the desire for superiority, if ideas of right or wrong are wholly relative, and if reference to natural, inward inspiration is nonsense, if a human being is a species that is slave to his sensualities and passions and never lowers his head except by force, if . . . and so on, then how can it be possible for us to talk about the dignity and honour of man, his unalienable rights and his noble individuality, and make that the basis of all our activities?

The west is involved in a basic contradiction about man:

In western philosophy, the personal dignity of mankind had been destroyed as far as possible and his position totally debased. Concerning the creation of man and the causes that gave him existence, concerning the purpose of Creation for him and the structure and warp and woof of his existence and being, and concerning the motivation and stimulation for his activity, his conscience and moral sense, the western world has lowered him to the degree we have already pointed out. With this back-ground, the west issues a great declaration about the worthiness and dignity of mankind, his inherent honour and nobility, his sacred and inalienable rights, and invites all human individuals to believe in that lofty declaration.

For the west, they should firstly have revised the explanations and expositions they made concerning man, and then they could have issued a declaration for the sacred and inherent rights of human beings.

I admit that not all western philosophers have presented man in the above-mentioned way. A large number of them have presented man almost in the same way as the east has done. My viewpoint concerns the way of thinking which exists among the majority of people in the west and is now influencing people all over the world.

The Declaration of Human Rights ought to have been issued by those who consider human beings of a higher rank than a material, mechanical compound. It would have been worthy of someone who did not consider the drives and motivations of the activities of human beings to depend exclusively upon animal and selfish motives: someone who believed in human nature. The Declaration of Human Rights should have been issued by the east, which believes in: *I am setting on the earth a vicegerent,* * and perceives in man a sign of the manifestation of Divinity. He who goes after human rights should be someone who believes that man is built with the intention of travelling towards the destination of: *O Man! Thou art striving unto thy Lord with a striving, and thou shalt encounter Him.* **

The Declaration of Human Rights befits those systems of philosophy which agree with the Qur'ãnic verse: *By the soul, that which shaped it and inspired it to lewdness and god-fearing!* * * * and believe that a human being is naturally disposed towards virtue.

The Declaration of Human Rights should have been issued by those who are optimistic about the nature of man according to: *We indeed created man in the fairest stature,* **** and consider man to have the most harmonious and the most perfect structure.

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* (Qur'ãn, 2 :30) اِنّي جاعِلٌ في الارض خَليفَةً

** (Qur'ãn, 84:6) يآءَيُها الانسانُ اِنّكَ كادِحٌ الى ربّكَ كَدحاً فمُلاقيهِ

*** (Qur'ãn, 91:7–8 وَنَفْسٍ وَما سَوّيها * فَاَلهَمَهَا فُجُورَها و تَقويهَا

**** (Qur'ãn, 95:4) لَقَدْ خَلَقْنَا الاِنسَانَ في اَحْسَنِ تَقْويمٍ

Looking at the way of thinking of the west in their explanations and presentations of man, the Declaration of Human Rights does not befit them, because it is this way which the west uses in practice to deal with human beings; that is to say, doing away with all human sentiments, making fun of all human distinctions, maintaining the priority of capital for man, the primacy of money, worshipping the machine, deeming wealth supreme, exploiting man and giving capital unlimited power. If, by chance, a certain millionaire should happen to bequeath his wealth toh[g]s dear dog, that dog would be regarded as being more honourable than man. Human beings would attend on the wealthy dog like butlers, clerks and office-hands, and stand before it respectfully with folded-hands.

The west has forgotten both itself and its God:

The important problem of human society today is that man has forgotten what the Qur'ãn calls his "self ", and also his God. The important thing is that he has debased himself. He has totally neglected to look inside himself, to listen to his inner self and conscience, and he has entirely focussed his attention on material and solid things. He considers the aim of life is nothing but to enjoy material things, and he knows nothing except that. He considers creation as if it were without purpose. He denies his own self and has forsaken his soul. Most of the misfortunes of human beings result from these misconceptions, and it may be feared that the day is not far-off when this way of thought will be universal, and suddenly destroy humanity. This angle of viewing human beings is the cause of the fact that, as civilization spreads and develops, the civilized person slowly degenerates. This way of thinking about human beings has turned out to be the cause of the fact that man in his true meaning is to be found only in the past. The great machine of civilization has the capacity to manufacture every grand and first-class thing except man.

Gandhi said* : "Because of this, the westerner deserves to receive the title of Lord of the Earth, for he is the master of every worldly possibility and blessing. He is capable of every worldly task, which other nations regard as being in the hands of God. But the westerner is incapable of one thing, and that is reflecting on his own self ; and this thing alone is enough to prove the futility of the false glitter of the new civilization.

"If western civilization has made accidental addicts to alcohol and engaged their attention in sexual activities, it is because the westerner wants to forget his self and lose his self instead of searching for it . . .

"His practical strength in discovering, inventing and preparing the means of war is the result of the westerner's escape from his self, not of his exceptional power and domination over himself . . . The westerner's fear of solitude and silence, his reliance on money, have made him incapable of hearing the voice of his inner self, and the motive for his unremitting hustle and bustle is the same thing. His impulse to conquer the world is his inability to rule over his self, and for this reason the westerner is the creator of confusion and corruption all over the world. . . What is the use of conquering the world when man gives up his own soul? . . . The people who are taught by the Bible to preach truth, love and peace are themselves running in all directions in search of gold and slaves. Instead of conforming to the teachings of the Bible in looking for reward and justice in the Kingdom of Heaven, they use the weapon of religion to exonerate their own sins, and instead of broadcasting the Word of God, they drop bombs onto nations."

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* Translated from the Persian. Original untraced. (*tr.*)

This is the reason that the Declaration of Human Rights was violated by the west before anyone else and more than anyone else. The philosophy that the west follows in practice leads them to no other way of action except the breaching of the Declaration of Human Rights.

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PART SIX

THE NATURAL BASIS OF FAMILY RIGHTS

* **The only trustworthy authority to refer to in order to know what are the real rights of human beings is the understanding of creation.**
* **In the broader social context the conventional aspect of life predominates, but in the family it is the natural side.**
* **The theory of four periods in connection with family rights is a pretended imitation of the socialistic theory regarding ownership of property.**
* **Do men and women have two natures as far as rights are concerned ?**

THE NATURAL BASIS OF FAMILY RIGHTS (1)

We pointed out that the spirit and foundation of the Declaration of Human Rights is that every human being should benefit from a kind of essential and honourable respect and individuality. In the context of his creation and formation, a series of rights and freedoms were given to him which can in no way be taken from or denied him.

We also said that this spirit and foundation is upheld by Islam and is in harmony with the philosophy of the east. What is incompatible with the spirit and essence of this Declaration, and what shows it to be false and baseless is the very explanation given in many of philosophical systems of the west concerning man and the make-up of his existence.

Evidently the sole reliable testimony to which we can refer for the purpose of finding out the true rights of human beings is the priceless book of creation. By referring to the pages and lines of this great book, the real rights held in common by all human beings and the position of the rights of man and woman in com-

parison with each other may be determined. Strangely enough, there are some naive people who are not prepared to recognize the great testimony of the book of creation unless they see some reason to do so. In their opinion the only competent authority is the body of the people who had a hand in the preparation of the Declaration and are today the masters and the supreme rulers of the world. It does not matter if they themselves are not concerned to abide by the subject-matter of this Declaration. Others should not be so presumptuous as to question what they say. However, on the basis of these very same human rights, we believe we have a right to question and to take note of what they say and do. We consider the huge process of creation, the speaking book of God, to be the only competent referable source of evidence.

I again apologize to my worthy readers that in this series of articles, certain of the questions which I put forward have a somewhat philosophical tinge and seem rather dry, and for some readers may be rather boring. I myself, as far as possible, avoid discussing these sorts of problem, but sometimes the relevance of these dry, philosophical matters to the problems of the rights of women are so great that it is impossible to avoid them.

The connection between natural rights and the direction in which nature moves:

In our view, natural and innate rights come into existence when the handiwork of creation directs created beings towards the perfection of their qualities, the predisposition for which is inherent in them, although in a latent state, and does this with clear-sightedness and by keeping in view the function and purpose of all of them.

Every innate aptitude is the basis of a natural right. For ex-ample, the child of a human being has a right to education and schooling, but a young lamb has no such right. Why? Because the

aptitude for learning and attaining wisdom exists in a human child, but not in a lamb. The plan of creation has assigned this aptitude of acquiring knowledge to mankind, but has not ascribed it to sheep. The right to think, to give expression to one's thoughts, and to hold independent opinions, is of the same category.

There are some people who think that to assume natural rights and to claim that mankind has been given the distinction of having a particular kind of right by creation is a baseless and self-centred idea and should be discarded. There is no difference at all as far as the rights of human beings and other creatures are concerned.

This is a totally mistaken idea. As a matter of fact, natural aptitudes are very varied. The creative plan has assigned to every kind of creature its own particular sphere, and its well-being is also determined to be within the path of its own orbit. The creative process has its own plan in relation to this matter, and it has left this basic document in the hands of its creatures so that there could not be even the least possibility of an accident based on ignorance or lack of information.

The root and foundation of family rights, which is the subject under discussion, should also be looked for in nature like all other natural rights. By looking into the natural characteristics of men and women and the inborn aptitudes that creation has endowed them with, we can understand whether men and women have identical rights and duties. Do not forget, as we have mentioned in our preceding articles, that the problem under discussion is the identicalness of the rights of men and women and not the equality of their rights.

Social rights :

As far as non-family social rights are concerned, that is, as far as rights within society at large, outside the circle of the family, are concerned, an individual acquires both equal and identical

rights. In other words, fundamental natural rights are equal and identical to each other. Every member of society has an equal right to benefit from his innate talents; everyone has the right to work; everyone has the right to take part in the race of life; every individual has the right to offer himself for any post or position in society and try to get it in a lawful manner; everyone has the right to demonstrate his personal academic achievements and practical worth.

Of course, the same equality in basic natural rights gradually places people in an unequal position as far as acquired rights are concerned; that is to say, everyone has an equal right to work and to take part in the competition of life, but when the question of the result of the competition, the standard of work and the level of adequacy is considered, not everyone comes up to the required standard. Some prove themselves more talented and some are found to be less talented. Some are more efficient and some less efficient, some are more capable and some less capable. Some are found to be more learned, more proficient, more skilful, more useful and more efficient than others in the task, and so, naturally, their acquired rights assume an unequal patterning. If we resolved that people's acquired rights should also be equal like their basic natural rights, our decision could be called nothing but cruel and unjust.

Now, why should all individuals be considered equal in their natural fundamental social rights? The reason is that observation of human beings demonstrates that amongst human individuals no-one is born the ruler or the ruled. No-one has come into this world as a worker, or a craftsman, or a professor, or a teacher, or an officer, or a soldier, or a minister. These are the merits and peculiarities which are a part of acquired rights. It means that individuals, by their competence, potential, work and activity, must take them from society, and that society by positive law give them to its individuals.

This is a very important difference between the social life of mankind and the collective life of gregarious animals like the bee. The institutions in the life of these animals are totally natural. Their duties and functions are all assigned by nature and not by their own choice. Some are born rulers and some are born to be ruled. Some are labourers and some engineers, while others are born executives. Evidently the life of man is not like this, and that is why some thinkers have totally refused to accept the old philosophical idea that man is by nature gregarious, and have considered human society to be based completely on arbitrary convention.

Family rights :

This is the state of affairs in society outside the family. Do the individuals within the family unit also have identical fundamental natural rights, the difference only lying in acquired rights? There is a lot of difference between a family which consist of a wife and husband, the father and mother, and sons and daughters, the brothers and sisters, and society outside the family, as regards fundamental rights, and the law of nature has set up family rights in a special pattern.

Here there are two different opinions. One view is that the fact of being a wife or a husband, a father or a child, a mother or a child, like all other social relationships and like the cooperation between individuals in public or state institutions, is not a reason in itself for some persons to have automatically a special status. Only acquired privileges can be a reason for some one of them, for example, to be the head and the other a subordinate, one to be obeyed and others to obey him, one to get more monthly pay and the other less. If a person is a wife, or a husband, or a father, or a mother, or a son, or a daughter, this would not be in itself a reason for him to have a special status. Only acquired privileges can determine their position in relation to each other. The idea of the identicalness of the rights of men and women within the family, to which they have wrongly given the name of equality

of rights, is based upon this very opinion. According to this idea, a man and a woman with similar talents and needs who have an understanding of similar rights to which they are temperamentally disposed will get married. As a result, it is necessary that family rights should be based upon equality, identicalness and uniformity.

As opposed to this, the other view is that their basic natural rights are also different. To be a husband in itself, that is, the fact of being a husband, imposes certain obligations and signifies certain rights, and to be a wife in itself imposes certain obligations and implies certain rights, and likewise in the case of being a father, or a mother, or a son, or a daughter. Anyhow, according to this view, the family is different from all social partnerships and associations. The unidenticalness of the rights of men and women, which Islam endorses, is based upon this principle.

Now, which of the two above opinions is valid, and in what way can we understand which of the two is correct?

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THE NATURAL BASIS OF FAMILY RIGHTS (2)

In order that the respected readers may successfully draw their own conclusions, it is necessary that they should bear in mind the subjects mentioned in the previous chapter. We said:-

1. Natural rights exist due to the fact that nature has a definite aim, and, keeping that aim in sight, it has placed certain abilities in the being of created things, and given them rights.

2. A human being, because he is a human being, benefits from a particular series of rights, which are called the rights of man, while animals do not benefit from these rights.

3. The method of determining natural rights and their special quality, is to refer back to creation. Every natural aptitude is natural evidence for a natural right.

4. All individual human beings, as far as social life is concerned, have equal and identical natural rights; the difference is in their acquired rights which depend upon work, the performance of duties, and upon their taking part in the competition for carrying out these responsibilities.

5. All individual human beings' rights in society are equal and identical. The reason for this is that a close study of the innate value of individual human beings brings to light that amongst them (unlike in the case of gregarious animals such as bees)

there is no one who is born a ruler or to be ruled, and likewise no-one is born to submit or to be obeyed, to carry out orders or to command, to be a worker or to be the employer. They did not come into this world as commanders or soldiers. The careers of man are not determined according to nature. Their tasks, jobs and responsibilities were not assigned by nature.

6. The theory of the identicalness of the rights of men and women is based upon the assumption that social life within the family is the same as social life outside the family. The members of the family have equal and identical rights. A woman and a man with the same aptitudes and the same requirements join together in family life, and they have the same innate capabilities. The law of creation did not determine their status, and did not assigned certain tasks and functions to them.

On the other hand, the theory of non-identicalness in family life is based upon the idea that the circumstances of family social life are different from those of social extra-familial life. A man and a woman do not join together in family life with the same aptitudes and the same requirements, and they do not possess the same natural capabilities. The law of creation has placed them in different positions, and has designed a particular orbit for each of them.

Now, let us see which one of the above two theories is correct, and find out in what way we can discover the correctness of one of them.

According to the criteria that we have already laid down, it is not so difficult a matter to determine which one of the two views is correct. If we refer to the natural aptitudes and requirements of men and women, namely to the natural capabilities with which the law of creation has endowed every man and woman, it is possible to determine the right course of action.

Is family life conditioned by nature or regulated by convention :

We mentioned in the last section that there are two views about human social life. Some think that mankind is by nature social, and they consider man to be what is called “gregarious” by nature.

Others, on the other hand, consider social life to be based upon convention. They think that man, by his own free will, and under the pressure of certain unavoidable external factors (not any inner drive) has made his choice and has agreed to live with his fellow man.

Now, what’ about family life? Are there two opinions here? No, the family life of human beings is completely natural, that is, man is by nature created domestic. Suppose that we doubt whether the social life of man is natural; even then we cannot doubt whether his domesticity is natural or not. Many animals, for example, have a kind of “married” life, like pigeons or certain insects which live in pairs, although they do not, by nature, have much social life, indeed, they may have none at all.

The question of family life is different from that of social life. Among human beings and among some animals there is a natural tendency towards a family life, establishing a home and having children, and this is according to a purposeful plan of nature.

History does not give any evidence for the theory that man was at any time without a family life. In other words, neither did man and woman ever live separated from each other, nor did sexual relations between individuals take a communal or public form. The life of wild tribes in the present age, which is considered to be a specimen of the life of primitive man, is also not like that.

The life of primitive man, whether matriarchal or patriarchal, did take the form of family life.

The theory of the four eras:

As far as the question of the ownership of property is concerned, it is admitted by all that in early times ownership took the form of joint-ownership and individual possession began afterwards; but, in the case of sex, this has never been so. The reason that there was joint-ownership in the early stages of human life was that at that time human society was arranged in tribes, and was based on the pattern of a large family. In other words, the members of a tribe who lived together shared the benefits as in family life. This was the reason for joint-ownership. In early times, let us suppose, there was no idea of law, or custom or tradition that could make man or woman responsible to each other. Only nature and their innate natural feelings bound them to certain duties and rights, but even then they never had unrestricted sexual relations. Just as with animals who live in pairs and abide by no social or positive law but under the law of nature, and conform their behaviour to certain rights and duties, their life and sexual relations is not without checks and conditions.

Mihr'angiz Manuchihriyan in the introduction to her book *Intiqãd bar qavdnin-e asãsi* va *madani-e Iran* (Criticism of the Constitution and Civil Law of Iran) writes: "According to sociology, the life of men and women in the different parts of the world is passing through one of these four eras: 1. The natural era; 2. The era of male dominance; 3. The era of female protest; 4. The era of the equality of the rights of men and women.

"In the first era men and women associate and have sexual relations with each other without any restriction or condition."

Sociology does not agree with the above statement. What sociology accepts at the most is that amongst some tribes, and sometimes, some brothers may marry some sisters jointly. All the brothers can have sexual relations with all the sisters, and the children are related to all of them. In other instances, adolescent boys and girls, before they get married, are not bound

by any restrictions, and only marriage imposes limitations over them. If it happens that the situation as regards sexual behaviour is in some savage tribes more generalized than this and woman is, as it were, a "public" woman, that is an exceptional state of affairs and should be considered a case of deviation from the natural and normal situation.

In his *The Story of Civilization,* vol.1, Will Durant writes:

"Our animal forefathers invented it. Some birds seem to live as reproducing mates in a divorceless monogamy. Among gorillas and orangutans the association of the parents continues to the end of the breeding season, and has many human features. Any approach to loose behaviour on the part of the female is severely punished by the male. The oranges of Borneo, says De Crespigny, 'live in families: the male, the female, and a young one'; and Dr. Savage reports of the gorillas that ʿit is not unusual to see the 'old folks' sitting under a tree regaling them-selves with fruit and friendly 'hat, while their children are leaping around them and swinging from branch to branch in boisterous merriment.' Marriage is older than man.

"Societies without marriage are rare, but the sedulous in-quirer can find enough of them to form a respectable transition from the promiscuity of the lower mammals to the marriage of primitive men."

The message is that family feelings are a natural and instinc-tive matter for a human being. It is not a product of habit or the result of civilization, it is just as for many -animals who naturally and instinctively have a drive towards family feelings.

As a result we hold that there never was a period for man-kind in which male and female, without any kind of restriction, condition or obligation, however natural, lived a completely free conjugal life. Such an imaginary stage is like sexual communism, which even the upholders of economic communism never claimed

to have found any traces of in early times. The theory of four eras in the relations between man and woman is a bungled imitation of the theory of four eras which socialists believe in as regards the ownership of property. They say that mankind has traversed four eras as regards ownership: the first stage that of common property; then the stage of feudalism; then capitalism; and finally the stage of socialism and communism, which is a return to the first stage of common property, but on a higher level.

We are in for a pleasant surprise when Ms. Manuchihriyan gives the relationship of men and women the name of 'equality of rights of men and women', and does not follow the socialists in this matter, and does not give the last era the name of "common property"

Although the above-named lady believes that between the fourth era and the first era there is much similarity, the reason she gives for it is that "In the fourth era, which has much similarity with the first era, man and woman live together with absolutely no kind of domination or superiority of one over the other."

I am still at a loss to understand what Ms. Manuchihriyan really means by 'much similarity'. If she only means the non-domination and non-supremacy of man, and an equality of undertakings and conditions between each other, how does a similarity exist between the present era and the era when, according to her, there existed no undertaking, no condition and no limits whatsoever, and men and women did not lead a family life. If the underlying idea is that during the fourth era all limitations and undertakings will gradually disappear, family life will be abolished, and a sort of sexual communism will prevail, it shows that the idea of these fervent believers in 'equality of rights' is something other than all other supporters of equality of rights imagine and demand. It would probably be rather horrifying for them.

* * * * *

We shall now divert our attention towards the nature of the family rights of men and women. In this connection, we should keep two things in mind: one of them is to see whether men and women have any difference in their nature, or not. In other words whether the differences of men and women are only as far as concerns the sexual organs, or whether the differences are more profound than this.

The other thing is whether, if the differences and dissimilarities are there, they are of the kind which have an effect in the determination of their rights and duties, or whether these are only differences of colour and birth which have no relevance to the nature of human rights.

Woman in nature :

I do not think that there is a need for arguments to decide the first issue. Everyone who has studied this subject knows that the differences between men and women do not merely concern the sexual organs only. If there is anything which is worth thoughtful consideration, it is whether these differences have any effect in determining the rights and duties of men and women.

European thinkers and scholars have satisfactorily explained the first issue. The close study of biology and psychology and also the social aspect of this question by these eminent thinkers does not give the least occasion for an objection concerning this issue. The aspect which attracted their attention less was how far these dissimilarities can have an effect in determining family rights and duties, and as a result put men and women in different positions.

In his well-known book *Man the Unknown,* the world-famous French physiologist, surgeon and biologist Alexis Carrel admits both issues, that is, he acknowledges the fact that men and women, according to the law of creation, have been made differently, and adds that these differences and dissimilarities make their duties and rights dissimilar.

In the chapter headed "Sex and Birth" he has discussed the subject. He says: "Testicles and ovaries possess functions of overwhelming importance. They generate male and female cells. Simultaneously, they secrete into the blood certain substances, which impress the male or female characteristics on our tissues, humours, and consciousness, and give to all our functions their character of intensity. The testicle engenders audacity, violence, and brutality, the qualities distinguishing the fighting bull from the ox drawing the plough along the furrow. The ovary affects the organism of the woman in an analogous manner . . .

"The differences existing between man and woman do not come from the particular form of the sexual organs, the presence of the uterus, from gestation, or from the mode of education. They are of a more fundamental nature. They are caused by the very structure of the tissues and by the impregnation of the entire organism with specific chemical substances secreted by the ovary. Ignorance of these fundamental facts has led promoters of feminism to believe that both sexes should have the same education, the same powers, and the same responsibilities. In reality, woman differs profoundly from man. Every one of this cells of her body bears the mark of her sex. The same is true of her organs, and, above all, of her nervous system. Physiological laws are as inexorable as those of the sidereal world. They cannot be replaced by human wishes. We are obliged to accept them just as they are. Women should develop their aptitudes in accordance with their own nature, without trying to imitate the males. Their part in the progress of civilization is higher than that of men. They should not abandon their specific functions."

After the explanation regarding the way in which the cells of the male sperm and female ovule are created, and how their union with each other takes places; and after pointing out that it is the existence of the female and not the male which is essential for the generation of offspring, he says that pregnancy fully develops the body and soul of a woman. At the end of the chapter he says: "The same intellectual and physical training, and the same ambitions,

should not be given to young girls and to boys. Educators should pay very close attention to the organic and mental peculiarities of the male and the female, and to their natural functions. Between the two sexes there are irrevocable differences. And it is imperative to take them into account in constructing the civilized world." (pp. 89 – 90 and 92)

As you have seen, this eminent thinker states the great number of natural differences between men and women, and also believes that these differences, in terms of their functions and rights, place men and women in different positions.

In the next chapter, also, we shall quote the writings of thinkers concerning the differences between men and women, and we shall infer from these in which areas of human activity they have similar abilities and requirements and in which they should have similar rights, and in which areas they do not have the same positions and in which they should have dissimilar rights and duties.

In the study and determination of the family rights and duties of men and women this is one of the most sensitive areas.

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PART SEVEN

THE DIFFERENCES BETWEEN WOMAN AND MAN

* **Is the idea that there are dissimilarities between women and men an idea from the middle ages?**
* **The matter of women's rights set Plato and Aristotle in opposition to each other.**
* **By determining innate dissimilarities between women and man, the law of creation has made their links more strong.**
* **as Man is created conquerer of the world, and woman a conquerer of man.**
* **Westerners are themselves suffering from a hangover as a result of those things on which the imitators of the west have recently become drunk.**

THE DIFFERENCES BETWEEN WOMAN AND MAN (1)

The differences between woman and man! What an absurd idea! In spite of our living in the second half of the twentieth century, there are still people, here and there, who think as if they were in the middle ages, and maintain old and out-of-date ideas of differences between women and men, and think that men and women are not the same as each other. No doubt they wish to infer, like the men of middle ages, that woman is an inferior sex; that woman is not a full human being; that woman is the link between animals and mankind. They think a woman does not have the ability or the esteem to live an independent and free life, and that she is obliged to live under the patronage and guardianship of man. Anyhow, ideas like these are now obsolete and out-of-date. Now it is established that all those idle speculations were quite fictitious, and that, in the period of their domination over women, men had vigorously supported these arguments, while the true position was really just the reverse. Woman, as a matter of fact, is the superior sex and man is the inferior and imperfect sex.

But no; in the twentieth century, due to the astonishing progress of science, the differences between men and women

have become clearer and more well-defined. There is no idle speculation or fiction in these hard facts. These are scientific and experimental realities. Nonetheless, these differences have in no way any bearing on the question as to whether woman or man is or is not the superior sex, the other sex being lower, inferior or imperfect. The law of creation brought these differences into being in order to make the relationship of a man and a woman within the family more firm, and the foundation of their unity more secure. The law of creation planned these differences so as to allocate with its own hands the rights and duties of women and men. The law of creation has laid down these differences in men and women with a purpose, just like the purpose that is found in the differentiation of the functions of the different organs within a single body. If the law of creation has designed every organ, the eyes, the ears, the legs, the hands and the spine in a particular form, it is not because it has given a preference to the two eyes, for example, and has unduly discriminated in their favour, showing cruelty to one part as compared with another.

Is it a question of symmetry or one of imperfection and perfection?

One of the things which surprises me is that some people insist that the difference between men and women in their physical and psychological make-up should be depicted as women being imperfect and man being comparatively perfect. This would show that the law of creation had some ulterior motive in creating woman an imperfect being. The idea that a woman is an imperfect creature arose among the people of the west before it did among us easterners. Men of the west were quite unjust in their jeering at women and in calling her imperfect. Sometimes they claimed to be representing the church and remarked, ‘A woman should be ashamed of being a woman’. Sometimes they said, ‘Woman is a being who has long hair and is short of understanding’. ‘A woman is the last of all savage beasts whom man has tamed.” A woman is the last link between animals and human beings,’ and so on.

More surprising than this is that a section of the people of the west have recently done a complete volte-face, and now want to prove by one thousand and one different arguments that man is an imperfect, inferior and humble being, and that woman is the perfect and superior sex.

If you, my dignified reader, had gone through the book *The Natural Superiority of Women* written by Ashley Montagu, which was serialized in *Zan-e rũz,* you would have seen how strenuously and with what a shower of non-sensical talk the author wanted to prove that woman is more perfect than man. That book, in so far as it presents the results of the discoveries of medicine, psychology or social statistics, is very valuable, but when the writer himself proceeds to draw “inferences” and wants to deduce conclusions in support of his theory, which is represented by the title of the book, he goes to the extremes of nonsense. Why should they consider woman to be so inferior and worthless an object one day and then be obliged the next day to make amends for the past and do away with all deficiencies and defects from the face of woman and transfer them to the face of man? Why should it be necessary to interpret the differences between man and woman as an imperfection in one and a perfection in the other, and be obliged, at one time, to take the side of one and, at another time, to support the other?

On the one hand, Mr. Montagu insists on representing woman as a species superior to man, yet, on the other hand, he represents the distinctive attributes of man as being the result of historical and social factors and not the result of natural factors.

In fact, the differences between men and women are a matter of symmetry and not one of imperfection or perfection. It is the intention of the law of creation that these differences should be the source of a better relationship between women and men, who are without doubt created to live together. To live a single life is contrary to the law of creation. This point will become clearer

during our subsequent discussion in connection with our clarifications of the differences.

Plato's theory:

This matter is not one that has only recently been put out for discussion. It is at least two thousand four hundred years old, because it was discussed in the same form in Plato's *Republic*.

Plato claims, in unambiguous terms, that women and men possess similar capabilities, and that women can carry out all the obligations and responsibilities which men are charged with, and benefit from all the rights that men enjoy.

The origin of all the new ideas which have come up for consideration concerning woman, and, what is more, certain other ideas which people in the twentieth century have deemed to be excessive and consider unacceptable, are also found in the thoughts of Plato. That these ideas belong to a man who is called the father of philosophy may look strange to the reader. Plato in Book V of his *Republic,* argued in favour of the State's control over women and children in connection with the improvement and the well-being of different generations, of its depriving some women and men of their right to reproduce, and of its allocation of the right to reproduce exclusively to those who have especially excellent and distinctively superior qualities. He furthermore urged in favour of the arrangement whereby the education and training of children was carried on outside the environment of the family, and of permitting reproduction only in certain years of the lives of men and women, the age at which they would be most full of vitality and vigour.

Plato is of the opinion that women should also be given military training in exactly the same way as men and that they should also take part in athletic competitions exactly as men do.

However, there are two noteworthy points in what Plato said. Firstly, he admits that women in physical as well as spiritual and mental powers are weaker than men, that is, he admits of a difference between women and men as regards quantity, but he does not believe in their being different as regards the quality of their talents. Plato believes that men and women are alike in their talents, though, of course, woman is weaker than man in all respects; but, he asserts, it does not necessarily follow that men and women have a special ability to do one task rather than another.

Plato thanks God for his being born a man and not a woman, especially because he considers woman to be weaker than man. He says; " I thank God that I was born a Greek and not other than Greek, that I came to this world as a free person and not a slave, and that I was born a man and not a woman."

The other thing is that whatever Plato said in respect of the well-being of children, their training, the similarity of the make-up of men and women, and the state's control on women and children, all of it concerns the ruling class, that is, philosopher-rulers, whom he considers specifically worthy to be rulers. As we know, Plato is, in politics, against democracy and favours an aristocracy. All that Plato said concerned the aristocratic class, and as far as people outside that class are concerned his views were different.

Aristotle against Plato:

After Plato, the other figure of the ancient world whose thoughts and opinions we are acquainted with is Plato's pupil Aristotle. In his *Politics,* he expressed his ideas concerning the differences between women and men, and vehemently opposed his teacher, Plato. Aristotle believes that the difference between women and men is not only in the quantity of their abilities, but also in the quality. He says the nature of the abilities of woman

woman and man is different, and that the functions which the law of creation imposes upon each one of them and the rights which have been designated to them are different in many respects. According to Aristotle excellence in the morals of men and women are also different in many respects. A certain behaviour may be regarded as a virtue for a man, and yet may not be commendable for a woman, and in exactly the same way a certain behaviour or comportment may be praise-worthy and excellent for a woman, but not considered worthy of a man.

The views of Aristotle ousted the views of Plato in the ancient world, and the thinkers coming after them gave preference to the views of Aristotle over those of Plato.

The opinion of the modern world:

All that has been stated above concerns the ancient world. Now we have to see what the modern world says. The modern world does not rely on mere guesses and conjectures. Instead, it relies on observation and experiment, on statistics and figures, on the study of the thing itself. In the light of profound medical, psychological and social studies, more and multifarious differences between women and men have been discovered. These could not have been discovered by any means in the ancient world.

Those in the ancient world who used to judge men and women did it simply on the grounds that one has a large frame and the other a smaller one; one is more coarse and the other more delicate; one is taller and the other shorter; one has a stronger voice and the other is soft-speaking; one is more hairy and the other has a more smooth body. The greatest extent they went to was to take into account the difference in the time of puberty, or to look at the differences in intellect and sentiments. Man was considered a symbol of intellect and woman a symbol of kind and affectionate feelings.

However, other kinds of differences have recently been discovered besides these, and it has been discovered that the worlds of women and men are different to each other in many respects.

We shall mention all the differences between women and men which we were able to gather from the writings of the great scientists, and then we shall deal with the question as to how many of these differences are based in nature, and how many are the result of historical, cultural or social factors. A number of these differences can be listed by anybody after a little experience and observation, and some of them are so clear and self-evident as to be impossible to deny.

Reciprocal differences:

Physique: Man, normally, is of a larger frame and woman has a smaller body; man is taller and woman is shorter; man is more coarse and woman is more delicate; man has a stronger voice and is harsh in his tone, while woman is more soft-speaking and more melodious in her voice; the development of a woman's body takes place sooner than the development of a man's body to the extent that it is universally said that the foetus of a girl develops sooner than that of a boy. The muscular development and strength of a man's body is greater than that of a woman. A woman's power of resistance to many diseases is greater than a man's. Woman reaches the age of puberty earlier than man, and also becomes unproductive sooner as regards the reproductive powers. A girl starts speaking earlier than a boy. The normal brain of a of a man is larger than the normal brain of a woman, but with attention to the proportional size of their bodies, the brain of a woman is larger than that of a man. The lungs of a man have the capacity to inhale more air than the lungs of a woman. A woman's heart-beat is quicker than a man's.

Psychology : Man has a greater preference for physical exercise, hunting, tasks involving movement, than a woman. The sentiments of man are challenging and war-like, while the sentiments of woman are peaceable and convivial. Man is more aggressive and quarrelsome, and woman is more quiet and more calm. A woman refrains from taking drastic action, both with regard to others and with regard to herself, and this is the reason for the smaller number of suicides in women than in men. In a mood for suicide, man will take a hastier course in comparison with woman. Men will use a gun, hang themselves, shoot themselves, or jump from the top of a lofty building, while women tend to use sleeping pills, poison, and so forth in such a crisis.

The feelings of a woman are aroused quicker than a man's. Her sentiments are excited sooner than those of man; that is, a woman, in matters with which she is involved or of which she is afraid, reacts sooner and with more acuteness, just as she feels, while a man is more cool-headed. A woman is naturally more disposed than a man towards decoration, ornaments, beautification, adornment and dress. The feelings of woman are more transient than those of man. Woman is more cautious, more religious, more talkative, more timid and more formal than man. The feelings of a woman are motherly, and these feelings are clearly visible in her childhood. Woman is more concerned with the family, and her attention is subconsciously directed more than man towards the importance of a home. In activities based on reasoning, and in abstruse intellectual problems, woman cannot equal man, but in literature, painting and all matters that are related to aesthetics, she is not behind man. Man has more ability to keep a secret than woman, and he keeps unpleasant private matters to himself better than a woman. This is the reason why men are victims to some psychological illnesses more than women. These illnesses develop as a result, of his keeping his confidences to himself. Woman is more soft-hearted, and instantly resorts to weeping, and occasionally to fainting.

Feelings towards each other :

Man is the slave of his own passions and woman holds her-self fast in the love of man. A man loves a woman, because he has admired her or chosen her, while a woman loves a man because she has perceived his worth or has previously made an avowal of her sincerity. Man wants to take possession of the person of the woman and to wield power over her, and woman wants to conquer the heart of man and prevail upon him through his heart. Man wants to master woman through her head, and woman wants to influence man through his heart. Man has a desire to embrace woman and woman has a desire to be embraced. Woman desires to see bravery and courage in man, and man wants to see elegance and charm in woman. Woman considers the support of a man the most valuable thing for her. Woman is able to control her sexual drive more than man. The sexual drive of man is aggressive, and that of woman passive and inciting.

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THE DIFFERENCES BETWEEN WOMAN AND MAN (2)

In issue no.90 of *Zan-e rũz,* the view of an eminent American professor of psychology, Prof. Reek (?), was published. For many years, he had been making investigations and conducting research into the conditions of woman and man and he had arrived at certain concrete conclusions; he listed a lot of differences between woman and man in a voluminous book.

This professor says that the world of man is totally different from the world of woman. If a woman cannot think like a man or act like a man, this is because the worlds of both are different. He observed that in the Old Testament it is mentioned that: ‘Man and woman have come into being from one flesh’. Yes, no doubt both have come into being from one flesh, but they have dissimilar bodies, and, taken as a whole, are different from each other. Moreover, the feelings of these two beings can never be alike, and their reactions to events and circumstances will never be the same. Man and woman take different actions according to, and consistent with, their true sexual dispositions, and just like two planets they revolve in their two different orbits. They can have under-standing between each other and be completely at one but they can never be one. This is the reason why man and woman can live together, love each other and not get tired and bored with their particular and distinctive qualities and behaviours.

Prof. Reek made a comparative study of the mentalities of men and women and pointed out a number of differences. Among others, he said that it is boring for a man to be always in the company of the woman he loves, whereas nothing is more pleasant for a woman than to live by the side of the man she loves. Man, in his heart, wishes to remain always in the same state day after day, while a woman always wants to have a new being and to rise every morning from bed with a new look. The best words that a man can

say to a woman are: “My dear, I love you” and the most beautiful words that a woman can say to the man she loves are: “ I am proud of you”. If a man has had relations with several lovers during his life, that man is considered attractive in the eyes of other women. On the other hand, a woman who has had relations with more than one man is disliked by men. When they are old, men have a feeling of unhappiness because they miss their main support in life, that is, their work, but old women on the contrary, feel satisfied because they have the best thing in front of their eyes, namely a home and some grand-children. In the eyes of men, a successful life means to be regarded as a respectable personality in public, while in the eyes of a woman success means to win the heart of one man, and to hold and sustain it for the whole of her life. A man always likes to convert his spouse to his opinions and nationality, while for a woman after marriage to change her beliefs and nationality to that of the man she loves is as easy as changing her family name.

The masterpiece of creation :

Apart from the controversy as to whether the dissimilarities between men and women necessarily cause differences in their rights and duties concerning household matters, this phenomenon is basically one of the most amazing masterpieces of creation, and is a lesson in the Unity of God and in knowledge of Him, a sign and an indication of the wise and efficient order of the universe, and clear evidence for proof of the fact that the process of creation is not based upon mere chance — nature does not go through its processes blindly, as if in the dark. It is an enlightening proof of the reality that the phenomena of the universe can-not be explained without invoking the fundamental principle of a final cause.

So as to arrive at its own goal and to preserve its nature, the gigantic apparatus of creation has brought into being the great device of reproduction. From its own workshop, females of the same species and males of the same species are continuously brought into existence. Since, in order to maintain and prolong the existence of the subsequent generations, the cooperation of the

two sexes, especially in the human species, is required, and so as to persuade these two sexes to help each other in this work, the foundation of their union and unity was laid. It has been arranged in such a way that self-assertion and the seeking of one's own interest,- which is natural in every living being, is transformed into service, cooperation, forbearance and self-denial. The two sexes are made with the desire to live together; and to make the plan completely practical, remarkable physical and mental differences are established between them, so that their bodies and souls can be better united. These differences are the source of mutual attraction, and are designed so that the male and the female should feel love for each other. If woman had had the body, spirit, manners and behaviour of a man, it would have been impossible for her to attract man towards herself, and make him eager to become united with her. Likewise, if man had all the physical and mental attributes of a woman, it would have been impossible for woman to regard him as the hero of her life, and consider that her highest art, is to hunt and conquer his heart. Man is born to conquer the world, and woman to conquer man.

The law of creation has constituted and built man and woman according to such a pattern that they are attached to and seek each other, but not in the way in which they are attracted to other things. The interest that a human being has in other things arises from his self-interest, in other words, a human being wants things for himself. He sees them as a means: he wants to sacrifice them for himself and for his comforts. But the attachment of a husband and a wife is in such a way that each of them wishes the well-being and comfort of the other, and is happy in forbearance and self-denial for the sake of the other.

A union stronger than passion :

It is strange that some people cannot distinguish between 'passion' and 'affection'. Such people think that the only factor which can unite a couple is desire and passion, the motive of

taking advantage, of benefiting, the same sort of interest that a person has in food, drink, clothes and cars. They do not know that besides selfishness and the desire to exploit, there are other interests which are innate and natural. These interests do not have their roots in self-interest. The source of such attachments is exactly the reverse of what they think. These relations have their source in self-denial, forbearance and a preference of discomfort for one-self so as to ensure the comfort of the other. These are the relationships which reveal the humanity of human beings. Indeed, some of these sentiments are observed, as far as the couple and their offspring are concerned, even in animals.

These persons imagine that a man has always looked and still looks towards a woman in the same way as a young westerner looks at a street-walker, as if it is only passion which could unite the two of them. As a matter of fact, the union which constitutes the basis of the unity of the husband and the wife is greater than passion. It is the same thing which the holy Qur'ãn mentions with the name of "*mawaddah*" (love) and "*raḥmah*" (mercy).

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُم مِّنْ أَنفُسِكُمْ أَزْوَاجًا لِّتَسْكُنُوا إِلَيْهَا
وَجَعَلَ بَيْنَكُم مَّوَدَّةً وَرَحْمَةً.

> *And of His signs is that He created for you, of yourselves, spouses that you might repose in them, and He has set between you love and mercy. Surely in that are signs for a people who consider.* (30:21)

How fallacious it is to explain the history of the relations of man and woman thinking only of the idea of profiting and exploiting, and, as it was previously mentioned, basing this on the struggle for survival. We have already referred to how much nonsense has been written about this.

When I read some of their writings and their elucidations of the history of the relations of man and woman, I find that the only principle these people employ is that of contrast. They suppose that men and women are two different classes of society which

have always been in conflict and at war with each other. Truly, it is all amazing for me, and I deplore their lack of reason and judgement. If they can account for the history of the relations of fathers and their children in terms of profit and exploitation, they can also interpret the history of wives and husbands in the light of that point of view. It is true that man is stronger than woman, but the law of creation has so constituted man instinctively that he could not perpetrate on his wife the atrocities which he has inflicted on his slaves, serfs, inferiors and even his neighbours, just as he could not practise that sort of cruelty with his own sons and daughters.

I do not deny the cruelties of men towards women, but I refuse to accept the interpretation that is put forth concerning those cruelties. Throughout history, men have inflicted a great many cruelties on women, but the motivation for these cruelties was the same as that which caused them to be cruel to their children, in spite of their great concern for them, their carers and their welfare. These were, of course, the very things which caused them to be cruel to themselves as well, and the root cause was ignorance, fanaticism and traditionalism, but not the will to exploit. If I get time, I will give a detailed exposition regarding the history of the relations of men and women at an opportune occasion.

Reciprocal differences in the feelings of men and women towards each other :

Man and woman do not differ from each other only in their outlook towards matters of family life, the very way in which they are attached to each other is different. To be more clear, the nature of the attachment of man to woman is not the same as the nature of the attachment of woman to man. Despite of the fact that attraction is mutual, still, unlike inanimate bodies, the smaller body attracts the bigger body towards itself. Creation has designed man as a symbol of searching, loving and demanding, and woman as a symbol of beloved ness and attraction.

The sentiments of man are characterized by asking, and the sentiments of woman are towards demureness; the sentiments of man are to seek, while the sentiments of woman are to be sought.

Quite recently the photograph of a young Russian girl who had committed suicide appeared in one of our daily news-papers. The girl had written on a paper which she had left behind: 'Upto this time no man has kissed me, and life is unbearable for me.'

This was the cause of a great defeat for a girl, that she had not been loved by a man or kissed by him; but which young man would be disappointed from life if a girl had not kissed him, or if he had not kissed a girl?

In his detailed and comprehensive discussion, Will Durant says that if the criterion of the preference for, or worth of, a girl were learning and intellectual achievements, and not natural charm and subliminal cleverness, girls with lesser academic achievements would not have been very successful in finding husbands. The true position, however, is that sixty per cent of university women are without husbands. He says that Sonia Kovalevsky, a distinguished scientist, complained that no one would marry her. "Why can no one love me? I could give more than most women, and yet the most insignificant women are loved and I am not." (*The Pleasures of Philosophy,* p.136)

Please note that the nature of the feelings of disappointment of this lady is different from what the disappointment of a man would be. She says: "Why does nobody want me? "

In the affair of finding a wife, a man feels defeat when he is unable to get the woman he loves, or if he gets her and is unable to keep her under control.

All these matters have a philosophy behind them: a stronger and deeper bond of attraction and unity. And why this attraction?

Is it so that men and women can get more pleasure out of life? No, not just that; rather it is the foundation of human society and the structure of the maintaining and training of the coming generation which is laid on that base.

The view of a female psychologist :

In issue no.101 of *Zan-e rũz,* the opinion of a female psychologist, Cleo Dalson (?) , was quoted. This lady says that in so far as she is a woman psychologist, she is keenly interested in the study of the mentality of men. In recent past, she says, she was commissioned to research into the psychological factors in women and men and she came to the following conclusions :

1. All women like to work under somebody else. In other words, they prefer to work as a subordinate under the supervision of some superior.
2. All women want to feel that their existence creates, and is a matter of, need.

After that this lady mentions her own opinion. She says that she believes these two desires of women have their root in the fact that women are under the commands of their feelings, whereas men follow their reason. It has been observed very often she goes on, that women are not only equal to men as far as intelligence is concerned, but are sometimes better than them. The only weak point in women is the intensity of their feelings. Men always think in more practical ways, arrive at better conclusions, are better organizers and give better instructions. So the mental superiority of men over women, she reasons, is something which is planned by nature. However much women may fight against this matter of fact, it will prove fruitless. Because they are more sensitive than men, women should accept the reality that they need the supervision of men in their life. The most important aim in the life of woman is security, and when she succeeds in fulfilling her aim,

she ceases to be active. A woman is afraid of facing the dangers involved in achieving her aim. Fear is the only feeling which they need help in order to dispel. Those tasks which re-quire continued mental effort make women bored and tired.

A hasty movement :

The movement that was started in Europe to restore the suppressed rights of women took place haphazardly and in a great hurry because they were very late in starting it. Feelings did not let reason speak and be taken as their guide, and that was how everything good and bad was washed away in one wave. This movement helped woman out of many misfortunes, gave her many rights, and opened closed doors for her, but, in exchange, it created a lot of other misfortunes and miseries for her and for human society in general. No doubt, if these matters had not been taken up so hurriedly, the restoration of women's rights would have taken a far better course. In that case the wailings of wise people against the present unpleasant situation and the even more horrendous future would not have reached the skies. Anyhow, there is still hope that knowledge and reason may prevail, and the feminist movement, instead of being led, as before, by feelings, will listen to the advice of knowledge and reason. The fact that the distinguished thinkers of Europe have given expression to their views on this matter is by itself a sign of hope in this direction. It can be seen that concerning the relations of men and women, the people of the west are themselves fed up and bored with their own behaviour, the very same behaviour with which the imitators of the west have recently become intoxicated.

The view of Will Durant :

In part four of his book *The Pleasures of Philosophy,* Will Durant has made a very detailed and comprehensive analysis of the problem of sex and the family. We shall make a short selection

of certain parts of that book for our readers so that they may have an idea of the way of thinking of western scholars and abstain from passing hasty judgements.

Under the heading of "Love" Will Durant writes:

"It is at puberty that love sings its first clear song. Literally puberty means the age of hair — the sprouting of vegetation on the male; particularly hair on the chest, of which he is barbarically proud, and hair on the face and chin, which he removes with the patience of Sisyphus. The quality and abundance of the hair seem to rise and fall (other things equal) with the cycle of reproductive power, and are at their best at the acme of vitality. This sudden foliage, along with the deeping of the voice, is among the "secondary sexual characters" that come to the male at puberty; while to the blossoming girl nature brings the softened contours that will lure the eye, the widened pelvis that will facilitate maternity, and the filled-out breast that is used to nurse the child.

"What causes these secondary characteristics? No one knows; but Professor Starling has found favour for his theory that when puberty comes, the reproductive cells begin to produce not merely ova and sperms, but certain "hormones" which pass into the blood and cause a physical and psychical transformation. It is not only the body that is now endowed with new powers; the mind and character are affected in a thousand ways. 'There are in life,' said Romain Rolland, 'certain ages during which there takes place a silently working change in a man' — or in a woman. This is the most important of them all. New feelings flood the body and the soul; curiosity drives the mind forward, and modesty holds it back." (pp.107 -108)

" 'All men,' says de Musset, 'are liars, traitors, babblers, hypocrites, stutters; all women are vain, artificial, and perfidious; . . . but there is in the world one thing holy and sublime, and that is the union of these two imperfect beings.' " *(ibid.,* p.110)

"In, adults the ritual of courtship is acquisitive advance by the male, and seductive retreat by the female. There are exceptions here and there . . . Usually the male takes the positive and aggressive role, because he is by nature the fighter and the beast of prey; the woman is to him a prize which he must conquer and possess. All courtship is combat, and all mating is mastery." *(ibid.,* p.111)

"The superior modesty of woman obviously subserves the purposes of reproduction. Her coy retreat is an aid to sexual selection; it enables her to choose with greater discrimination the lover who shall be privileged to be the father of her children. The interest of the race and the group speak through her, as the interests of the individual find their strident voice in man . . . Woman is cleverer than man in love because, normally, her desire is less intense, and does not obscure her judgement." *(ibid.,* p.117)

"Darwin considered the female of most species to be comparatively indifferent to, love; Lombroso, Kisch, Krafft-Ebing .. . will have us believe . . . that . . . (it) is not . . . physical de-light that woman seeks, so much as an indiscriminate admiration and a lavish attention to her wants; and in many cases the sheer pleasure of being desired contents her . . . 'Love in woman', says Lombroso. 'is in its fundamental nature no more than a secondary character of motherhood, and all the feelings of affection that bind woman to man arise not from sexual impulses, but from the instincts — acquired by adaptation — of subordination and self-surrender.' " (*ibid.,* pp. 117-118)

In the chapter gathered together under the title "Men and Women", Will Durant writes: "The function of the woman is to serve the species, and the function of the man is to serve the woman and the child. They may have other functions also, but wisely subordinate to these; it is in these fundamental and half-unconscious purposes that nature has placed our significance and our happiness. . . The woman's nature is to seek shelter rather than war; and in some species the female seems quite without the

instinct of pugnacity. When she fights directly it is for her children." *(ibid.,* p.119)

"She is more patient than man; and though he has more courage in the larger issues and crises of life, she abounds in diurnal and perennial fortitude for facing the smaller and endless irritations of existence. . . But woman is pugnacious vicariously. She goes for a soldier and delights in a masterful man; some strange masochistic element in her thrills at the sight of strength, even when its victim is herself." *(ibid.,* pp.119-120)

"Occasionally this ancient joy in virility overrides her more recent economic sense, and she will marry a fool if he is. brave. She submits gladly to a man who can command; if she seems less submissive in our days it is because men have less force of character than before . . .

"Woman's interests are familiar, and normally her environment is the home; she is as deep as nature and as narrow as four walls. Instinct adapts her to the traditional, and she loves the traditional as any expert loves the sphere which reveals his excellence. She is less experimental in mind and morals (barring certain metropolitan exceptions) ; if she resorts to 'free love' it is not because she finds freedom in it, but because she despairs of achieving normal marriage with a responsible male. How gladly she would draw the man closer to her and absorb him into the home! Even if, in younger years, she thrilled to the shibboleths of political reform, and spread her affection thin over all humanity, she withdraws these tentatives when she finds an honest mate; rapidly she weans him and herself from this universal devotion and teaches him an intense and limited loyalty to the family. 'I would give the world for you,' the youth says in courtship's ecstasy; and when he marries he does.

"It is just as well. The woman knows, without needing to think of it, that the only sound reforms begin at home; she serves as agent for the race when she transforms the wandering idealist

into her children's devotee. Nature cares little about laws and states, her passion is for the family and the child; if she can preserve these she is indifferent to governments and dynasties, and smiles at those who busy themselves with transforming constitutions. If nature seems now to fail in this task of protecting the family and the child it is because woman has for the while forgotten nature. But nature will not be long defeated; she can at any time fall back upon a hundred reserve expedients; there are other races and other peoples, greater in number and extent than ourselves, through whom she can maintain her resolute and indiscriminate continuity." *(ibid.,* pp.120, 124, 125)

This has been a short selection of the statements of distinguished thinkers about the differences between women and men, and their views in this connection.

I had intended to discuss, under the heading of 'The Secret of Differences', how far historical and social factors have been effective in bringing about these differences. Anyway, I dropped the idea of a comprehensive discussion of this matter so as to abstain from enlarging the scope of the subject matter. I hope this matter will become completely clear in the course of future chapters.

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PART EIGHT

DOWER AND MAINTENANCE

* Do "dower" and "maintenance" remind us of the age when woman was the property of man ?
* The Holy Qur'ãn has mentioned dower as a gift from man and a mark of his seriousness.
* The reason for dower is that in the matter of love, nature has allotted different roles to women and men.
* Islam annulled the customs of the pre-Islamic period concerning dower.
* If woman took the initiative in love, love itself would collapse, and so would the personality of woman.
* We should reform those persons who do not live according to the law of Islam; why should we amend the law?
* The system of dower in Islam is peculiar to it; we should undertake a comparative study of it and other systems of dower.
* Europe gave woman economic independence only a century ago, whereas Islam gave her that independence fourteen centuries ago.

* **There are three kinds of "maintenance" according to Islam.**
* **European woman should thank the machine not the law-makers.**
* **Islam gave economic independence to women, but did not destroy family life.**
* **The potentiality of woman in the production of wealth is less than man's; her potentiality for consuming wealth is greater.**
* **Now man wants to take revenge from woman for her extravagance by denying her the right of dower.**
* **Abolition of the right of dower for woman paves the way for exploitation for woman.**
* **Did the Declaration of Human Rights denigrate woman?**

DOWER AND MAINTENANCE (1)

One of the oldest customs in the relationships within the human family is that man has acknowledged the right of the woman to a dower *(mahr)* on the occasion of marriage. He used to pay something of value to the woman or to her father. More-over, he was responsible, during the whole period of marriage, for the maintenance and upkeep *(nafaqah)* of his wife and children.

What is the origin of this custom? Why and how did it come into existence? What form does the dower take? Why should the husband pay for the maintenance of the wife? If it is agreed that both the husband and the wife should abide by their natural and human rights, that absolutely just and humane relations should subsist between them, and that man should live with woman entirely in his capacity as a human being, is there any justification for dower and maintenance? Or are dower and maintenance handed down as a remnant from those ages when woman used to be the property of man? Should dower and maintenance be abolished, according to the demands of justice and equality of human rights, especially in the twentieth century, so that marriages

take place without the right to dower and maintenance, and should woman bear her own financial requirements, and also share equally in defraying the expenses arising from the children?

We begin our chapter with the topic of the dower. We shall see how the dower came into existence, and what its purpose was, and how sociologists have interpreted its coming into existence.

A short history of the dower :

Sociologists say that in pre-historic times human beings led a savage life, lived in tribal groups, and that, for unknown reasons, marriage among blood relations used to be considered taboo. The young men of the tribe who wished to marry were obliged to make the selection of their spouses and lovers from other tribes, and for that purpose they had to approach the other tribes to make this choice. In those ages man was not aware of the part he played in the birth of a child. In other words, he did not know that his intercourse with a woman was effective in bringing about the birth of a child. He considered children to be the children of his wife and not his own. Despite the fact that he could see the likeness of his features in the children, he could not understand the reason for that likeness. Consequently, men used to consider children, as well as themselves, the children of women. The lineage was constructed by reference to mothers, and not by reference to fathers. Men were considered barren and unproductive, and after marriage they lived in the tribe of the woman like parasites, and the woman needed him only for his company and his physical strength. This period according to sociologists, is known as the matriarchal period.

It was not long before man came to know of his part in the birth of children, and identified himself as the real person to whom his children were to be attributed. From that time on, he brought woman under his control, and took the position of the head of the family; the patriarchal period, as it is called, began.

In that age, too, marriage between blood relations was not considered admissible, and man was obliged to select his spouse from some other tribe and bring her to his own tribe. As there was always a state of conflict and hostility among tribes, the selection of a spouse was by means of abduction, in other words, a young man abducted the girl of his choice from another tribe.

Gradually, peace instead of hostility reigned, and the different tribes could peacefully live together. At that point the custom of abduction became unnecessary, and in order to get the girl of his choice man used to bind himself to the service of the father of the girl, and in lieu of the services rendered by the would-be son-in-law, the father of the girl gave his daughter to him, and then he would bring that girl to his tribe.

Eventually the economic situation improved, and man reached the conclusion that, instead of working for years for the father of the bride, it was preferable to present a worthy gift to him at the time of marriage, and thus obtain his daughter from him. He begun to do this, and from here the dower came into existence.

Thus, according to the sociologist, in the first period, man lived as a parasite and as an attendant on woman. In that period the woman used to rule over the man. In the subsequent period, when the power fell into the hands of man, he abducted the woman from her tribe. In the third period, in order to obtain the woman of his choice, man used to go to the father of the woman and work several years for him. In the fourth period, man paid an amount of money as a ‘present’ to the father of the woman, and from here the custom of the dower began.

They say that from the time mankind dropped the matriarchal system and adopted the patriarchal one, man made woman his slave, or at least his servant or labourer, and looked on her as an economic tool which might occasionally satisfy his passion also. He did not give her any social or economic independence.

The product of her labour was meant for others, namely, the father or the husband. Woman had no right to select a husband for herself, or to commence on her own initiative, or for her own profit, any business for economic or financial amelioration. As a matter of fact, they say, the money that man paid her as a dower, and the money he spent for her maintenance, was in lieu of the economic gain that he derived during the period of his marriage to her.

The dower in the Islamic system of rights :

There is also a fifth period, about which sociologists and theory-makers are silent. This is the period in which man, on the occasion of the marriage, presents a gift to the woman herself. Neither of the parents has any share or right in that gift. No sooner does the woman receive that present from the man, than she attains her social and economic independence. Firstly, she makes the selection of her husband by her own free will, and not in compliance with the will of her father or brother. Secondly, as long as she is in the house of her father, and, likewise, as long as she is with her husband, no one has the right to exploit her for his own benefit. The profits from her work and toil are for herself, and in the matter of her rights she does not need the guardianship of man.

Man, as far as "exploiting" is concerned, only has the right to sexual intercourse with woman in the period in which she is his wife; and as long as the marriage lasts, and man has sexual relations with her, he is responsible for arranging the comforts of life for her, as far as his means allow him.

This period is the very period which Islam acknowledges, and it has laid the structure of marriage on this foundation. There are a number of verses in the Qur'ãn ordaining that the woman's dower belongs to her and not to anybody else, and that for the duration of the marriage, too, man should be responsible for defraying the expenses of the maintenance of his wife.

Moreover, any profit that a woman earns by *way* of return for her work is her own income and not anybody else's, whether father or husband.

It is now that the question of dower and maintenance becomes a bit of a puzzle. For, when the dower used to belong to the father of the girl, and the girl used to go as a slave to the house of her husband, and the husband used to exploit her, the reason for the dower was in consideration of the purchase of the girl from her father. Besides that, the justification for maintenance was that every master has to bear the expenses of his slave. When it was resolved that nothing was to be given over to the father of the girl, and that the husband had no right to exploit her and derive any economic benefit from her, and that woman was economically independent, and that this independence was to such an extent that, as far as rights were concerned, she was not in need of the guardianship, permission and supervision of her husband, why, then, should there be a payment of dower, and an arrangement for her maintenance?

A look at history :

If we want to understand the philosophy of dower and maintenance in the fifth period, it is necessary to divert our attention for a while to the four periods that were listed previously. As a matter of fact, whatever is said on this matter is only a series of suppositions and guesses. These are neither realities of history, nor scientific facts derived from experiment. A few ideas brought together here and a few philosophical assumptions about man and the universe there, and these suppositions and guesses come into existence. We should not be in too much of a hurry to believe all that is said about the matriarchal period, as they call it, nor all the things that are said about the selling of daughters by their fathers and the exploitation of women by their husbands.

In their suppositions and guesses, two things are especially noticeable. Firstly, an effort is made to interpret the early history of mankind as extraordinarily cruel, crude and devoid of all human sentiments. The other thing is that nature, which always functions with wonderful planning to reach its objective, is totally ignored.

This kind of interpretation and theory about mankind and nature is acceptable to a person in the west, but for a person in the east, provided he is not under the spell of the west, it has no value. Because of certain special reasons, an occidental does not have a good understanding of human sentiments, so naturally he cannot believe that the spark of human feeling and the warmth of emotion plays a basic role in human history. An occidental's characteristic way of thinking is that when he gets up from the economic side of his bed, in other words, when he sees history from the economic angle, he sees bread alone. Then, in his eyes, history is a machine, and will not budge unless you give it nourishment. When he sees human affairs in terms of sex, humanity and the history of mankind with all its literary, artistic, moral and religious facets and manifestations of glory and intellectual splendour are nothing but the play of sublimated sexual forms. Likewise, if he looks at things in terms of domination and gaining the upper hand, the adventures of mankind seem to be entirely a tale of bloodshed aid cruelty.

In the middle-ages, the people of the west saw torture in religion and in the name of religion, they experienced atrocious persecution, and witnessed cases of people being burnt alive. That is why they are afraid of the name of God, of religion and everything associated with it. So, despite the fact that they see abundant signs and clear, verified indications of metaphysical purposes that the universe is not left to take care of itself, occidentals rarely venture to acknowledge the real final cause.

We do not ask these interpreters to believe in the existence of the prophets, who appeared throughout history, expounded

and heralded justice and integrity, campaigned against deviation, and suffered for the success of those campaigns. We only wish them. not to pass by and ignore the conscious role of nature.

There is no doubt that, in the history of the relations of women and men, excessive cruelties and innumerable atrocities have been chronicled. The Qur'ãn has narrated the most horrible of them, but still it cannot be said that the entire history of these relations has been one of cruelty and barbarity.

The real philosophy of the dower :

We believe that the introduction of the dower is the result of a very wise plan which is employed in the context of creation to keep a balance in the relations of men and women and to keep them united.

The dower has its basis in the fact that the way of loving of man and woman is different in each of them within the scheme of creation. Those who are spiritually enlightened believe this law to be transmitted throughout all existence. They say that the law of love, the bond of affection, attraction and attractiveness dominates all creatures and all things that exist, with the peculiarity that all creatures and all things that exist are different in so far as every creature has to fulfil a particular role. Thus an earnest longing in one and a calm indifference in the other is the way things are.

The famous Iranian poet, Fakhru 'd-Din 'Irãqi wrote:

Who knows what the ecstatic harp of love is
Whose plectrum sets the nine heavens spinning ?
There is a secret behind the veil; if you knew it
You would understand behind which allegory reality is to be founded.
It is love which at every instant colours everything else;
In one place, glory; in another submission and need.

Whoever comes as the lover burns with ardour,
Whoever is dressed as the beloved waits with patience.

In connection with the chapter where we stated the differences between man and woman, we said that the natures of the feelings man and woman have towards each other are not alike. The law of creation has ordained beauty, dignity and an element of indifference on the part of woman, and neediness, beseeching, love and serenading on the part of man. The bodily weakness of woman has thus been harmonized with the physical strength of man, and this very thing has caused man to always take the initiative in asking a woman's hand in marriage. We have seen before that, according to the version of the sociologists, it was always man who went out in search of woman, even in the matriarchal and patriarchal periods.

Scholars say that man is more sensual than woman. In Islamic traditions it is narrated that man is not more sensual than woman, rather, it is exactly the other way round. However, woman is created with more self-control against her passion, more strength of will. The result of both is the same: man is weaker than woman in controlling his instincts. This peculiarity has al-ways given the woman the opportunity not to pursue the man and not to hand herself over to him so easily. On the contrary, she has always forced the man to court her, and to take steps to win her over. As one of the first steps to seeking her pleasure, and as a token of respect for her acceptance, a gift was given to her.

Why is it that individuals of the male sex were competing, disputing and fighting amongst themselves for the hand of a female, and why it is the individuals of the female sex never showed any signs of desire or impatience to take possession of the male sex? It is for the very reason that the roles ascribed to the male and the female sexes are not the same. It has always been the role of the male and not of the female to be the one who asks, and the female sex has never, with any ardent desire, restlessly perused the male sex. She has always shown herself to be unconcerned and indifferent.

Dower is connected with the modesty and chastity of a woman. Woman has been made instinctively aware that it is necessary for her honour and respect that she should not give herself up freely to the authority of man but should give herself worth.

These are the reasons that made it possible for her, in spite of all her physical weaknesses, to draw man to her threshold, and compel men to compete with each other; by withholding herself from the reach of man she created romance. So many *Majnuns* are made to run after their *Laylas* * , and when she entrusts her body in marriage to man she accepts a present and a gift from the man as a token of his sincerity.

It is said that in some savage tribes, girls who were sought after by several restless suitors and lovers used to persuade them to duel between themselves. The one who defeated or killed his rival used to get the girl.

Some time ago, the daily newspapers in Tehran wrote that some girl had suggested to two boys, her lovers, that they should duel here in Tehran. Before her eyes, they fell upon one another with knives.

For those persons who consider power to be limited to only physical strength, and consider the history of the relations of women and men to be entirely a story of cruelty and exploitation by man, it is unbelievable that woman, a weak, delicate being has the power to throw members of the strong and powerful sex against one another. Nevertheless, if someone has just a little insight into the skilful plan of creation and the wonderful hidden power that was invented in the being of woman, he will be aware that these things are not strange.

Majnũn and Layla are the idealised lovers in much Arabic and Persian literature. (tr.)

Woman has had a great deal of influence over man. The influence of woman over man has been greater than man's influence over woman. In most of his feats, his bravery, heroism, ingeniousness and individual characteristics, man is indebted to woman and her delicate self-control, indebted to woman's modesty and purity, indebted to her attractiveness. Woman has always built man, and man society. When the modesty, purity and self-control of woman disappear, and woman aspires to play the part of man, man will first of all eat away the dower of woman, then man will forget his manliness, and society will be destroyed.

The same female power, by which she could keep her dignity throughout the long ages of history by not pursuing man, by which she could draw him to seek for her at her threshold, by which she could make men fight in rivalry with each other for her hand, by which she could drive men to the degree of killing each other, by which she could guard her modesty and chastity and could keep her body covered from the eyes of man, by which she could display herself as something mysterious, by which she could be a source of inspiration to man and an instigator of man's feelings of love, by which she could be the motivation of his skills, the inspirer of his valour and ingeniousness, and by which she could create in him such emotions as to make him sing her praise in songs of love and adoration and reduce himself to humility, humbleness and insignificance before her, this same power impels man to present her, on the occasion of marriage, with what is called a dower.

The dower is one of the articles of a general charter of traditions, the foundation of which is established in creation itself, and has been provided by nature.

Dower as in the Qur'ãn :

The Qur'ãn did not introduce and devise the dower in the form we spoke of above in discussing the fifth stage. The reason is that the dower in this form was invented by natural creation.

The only work the Qur'ãn did was to restore the dower to its natural form.

The holy Qur'ãn, with unrivalled fineness and sensitivity, says: وَآتُوا النِّسَآءَ صَدُقَاتِهِنَّ نِحْلَةً *And give the women heir dowers as a gift spontaneous;* (4:4). That is, the women's dowers which belong to themselves (and not to their fathers or brothers) and are gifts and presents from you to them are to be given to them.

The Qur'ãn has referred to three basic points in this verse: Firstly, dower is referred to as *ṣadugah* with *a dhimmah* (short 'u') following the letter 'd', and not as the usual *mahr. Ṣaduqah*) (صدقة is derived from the root *ṣadaq,* and dower is thus *sidãq* or *ṣaduqah,* for it is a token of the truthfulness and earnestness of the affection of the man. Some commentators, like the writer of *al-Kashshãf,** have made this point clear. Similarly, according to the opinion of Rãghib Isfahani, in his book *Mufradãt gharib al-Qur'ãn* (The Obscure Words of the Qur'ãn), the reason that, *ṣadaqah* with *a fatḥah* (short 'a') following the letter 'd' is written *saduqah is* because it is the sign of sincerity of spiritual faith. Secondly, the pronoun *hunna* (third person feminine plural) in this sentence means that it is ordained that the dower belongs to the woman herself and not to her father or mother. Dower is not the wages for having brought her up, nursed her and fed her.

Thirdly, the word *niḥlatan* (willingly, spontaneously, and not reluctantly) makes it completely clear that the dower has no other purpose apart from being an offer, a present, or a gift.

Two kinds of sentiments in animals :

This is not especially the case just for human beings. In all animals who are divided into two sexes, because this is needed for

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* *Tafsir al-Kashshãf,* written by Abu '1-Qãsim Jãrullãh Maḥmũd ibn 'Umar az-Zamakhshari al-Khwãrazmi (467/1075 – 538/1144).

completeness, the male is born more needy, that is, his feelings are more in need of the female than vice versa. This is the reason that, at the time of their mating, the male takes many steps to attract the female and make her accept. It is also instrumental in balancing the relations of the two sexes, so that the male does not misuse his strength, and so that he keeps an attitude of humility and meekness.

Presents and gifts in illicit relations :

Presents are not confined to marriage and the legal relation of wife and husband. When a man and a woman want to take pleasure from each other against the divine law, and want, as it is called, ‘free love’, even then it is the man who gives presents to the woman. If they incidentally spend money on coffee, tea or food, the man knows that it is his function to pay the bill. Woman considers it a sort of insult for her to have to pay for man. For a young man, “having a good time” requires money and financial resources, and, for a young girl, it is a source of getting presents. These habits prevail even in unlawful relationships, and the root-cause of this is the different natures of the feelings of women and men towards each other.

European love - affairs are more natural than their marriages:

In the western world, where, in the name of the equality of human rights, they have altered family rights from their natural form, and have tried, despite the law of nature, to put man and woman in the same situation, and leave them to act out the same roles and to perform the same duties in the family, still, when ‘free love’, as it is called, appears, and the laws of the land do not change man and woman from their natural course, man performs the same function, which is natural to him, of seeking, requesting, giving something of value, and spending money. Man presents gifts to the woman, and bears her expenses, in spite of the fact that in European marriage there is nothing like a dower, and, as for maintenance,

the burdensome responsibility is left to the lot of the woman. It means that European love-affairs are more in agreement with nature than European marriages.

The dower is one piece of evidence which leads to the conclusion that woman and man are created with different aptitudes, and that the law of creation has bestowed upon them different attributes, according to their natural and innate rights.

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DOWER AND MAINTENANCE (2)

In the last section we dealt with the philosophy of the dower and the reason why it came into existence. It will by now be clear that the basis of the dower is the fact that in relations between man and woman different roles are assigned to each of them by the law of creation. It will also be clear that the dower originates in man's feelings of kindness and gentleness, and not from his harsh, domineering and possessive characteristics. The woman's own part in this matter is her characteristic attitude of self-restraint, and not feebleness or lack of strength of will. The dower is a contrivance of the law of creation to raise the worth of woman and to elevate her to a higher status. The dower gives personality to a woman. For woman, the moral value of the dower is greater than its material value.

The customs of the pre-Islamic period that were abolished by Islam :

The holy Qur'ãn abolished the customs of the "Time of Ignorance" (the pre-Islamic period) concerning the dower and restored it to its original and natural position.

In the pre-Islamic period, fathers and mothers of girls considered the dower as their right in lieu of their services in having brought them up and nursed them.

In *al-Kashshãf* and other commentaries, it is written that when a daughter was born to someone and somebody wanted to congratulate him, he used to say (هَنيئاً لكَ النَافِجَة) *(hani'an laka'n-nãfijah),* that is, "congratulations, may she be a source of wealth (lit. a pouch of musk) for you." This was an allusion to the fact that father of the girl would marry her in future and would receive the dower.

In pre-Islamic days, fathers, or, in case they had died, the brothers believed they had the right of guardianship and power over daughters. In the first place, they married their daughters according to their own choice and not according to the will of the girls, and, in the second place, they considered the dower of their daughters to belong to themselves and not to their daughters. They also used to exchange daughters. The custom was that one man used to say to the other, "I will marry my daughter (or sister) to you in exchange for your daughter (or sister) becoming my wife". The other man, then, would agree to it. In this way, each one of the two girls became the dower for the other girl, and was married to the father or brother of the other girl. Such a kind of marriage was called *a shighar* marriage. Islam annulled this custom. The Holy Prophet commanded: (لاشِغارَ في الاسلام) *(lã shighãra fi'l-Islãm),* that is, the exchange of daughters or sisters is forbidden in Islam.

It is mentioned in Islamic traditions that not only does the father have no right to the dower of his daughter, but that he also cannot put down any other condition in his own interest, although the dower may have been paid to the girl on marriage. This means that the father has no right to any personal benefit from the marriage of his daughter, even though it may be with regard to something different from the dower.

Islam annulled the system whereby the sons-in-law worked for the fathers of the bride, which, according to sociologists, was the custom when there was no system for the exchange of wealth.

The work of the sons-in-law for the fathers of the brides was not only because the fathers wanted to profit from their daughters. There were other causes and motives also, and, quite possibly, it was necessary at one stage of civilization, and, to its own extent, was not oppressive. However, such traditions were certainly practised in the ancient world.

The story of Moses and Shu'ayb which is told in the Holy Qur'ãn, is evidence of the existence of such a custom. When Moses escaped from Egypt and reached the well of Madyan and the daughters of Shu'ayb were standing with the sheep, with no-body paying any attention to them, Moses felt sympathy for them and drew water for their sheep. The daughters described the occurrence of that day to their father, who sent one of them to invite Moses to his house. After getting to know one another, Shu'ayb one day told Moses that he wished to give one of those two girls in marriage to him provided he worked for him for eight years, and in case he himself wanted to work for another two years that would be an act of grace. Thus, he would work for him for ten years. Moses accepted this and he accordingly became Shu'ayb's son-in-law. That was the custom in those days. The reason for it lies in two things. One was the non-existence of wealth. The only helpful thing that a son-in-law could offer to his bride or to the bride's father was probably to work for them. The other thing was the custom of the father giving something to the daughter. Sociologists believe that the custom of the father giving something to the daughter was an old one. In order to be able to do this, the father took the future son-in-law into his service or received money from him. In practice, all that the father of the girl received from the son-in-law was for the daughter.

Anyhow, this custom was abolished in Islam, and the father of the girl has no right to consider the dower as his property, even in the event that his aim and motive was to spend it for his daughter. It is the daughter herself who has the right to exercise her will regarding that amount. She has the authority to use it in any way she likes. It has been expressly mentioned in Islamic traditions that the kind of dower just mentioned above is not permissible in Islam.

In the "Time of Ignorance" there were also other customs which practically used to deprive women of their dower. One of those customs was inheriting the wife. In the case of the death of a man, his inheritors, like his sons or brothers, inherited

his wives in exactly the same way as they inherited the property of the deceased. After the death of a man, the son or the brother of the deceased assumed that the marriage right was still valid, and considered himself empowered to marry the wife to anybody he liked and take the dower for himself, or, otherwise, to take her as his own wife without a new dower on the strength of the dower that the deceased had paid for her in the past.

The Holy Qur'ãn annulled the custom of the inheritance of the wife. It ordained :

يَـٰٓأَيُّهَا ٱلَّذِينَ ءَامَنُوا لَا يَحِلُّ لَكُمْ أَن تَرِثُوا ٱلنِّسَآءَ كَرْهًا

O believers, it is not lawful for you to inherit women against their will. (4:19)

In another verse, the Qur'ãn prohibits absolutely marriage with the wife of the father, even if it is not by way of successib,i, and even if she wishes to marry of her own free will. It is ordained :

وَلَا تَنكِحُوا مَا نَكَحَ ءَابَآؤُكُمْ

And marry not women whom your fathers married. (4:22)

The Holy Qur'ãn abolished all those customs and practices which were detrimental to the woman's dower. One of them was that when a man was bored with, and had developed an aversion to, his wife, he could maltreat her and subject her to torture. His motive for torturing her was she would agree to a divorce, and he would be able to take back all or part of what he had paid to her as her dower. The Holy Qur'ãn ordered :

وَلَا تَعْضُلُوهُنَّ لِتَذْهَبُوا بِبَعْضِ مَآ ءَاتَيْتُمُوهُنَّ

Neither debar them, that you may go off with part of what you have given them. (4:19)

Another one of those practices was that a man would marry a woman and negotiate a large amount as the dower, but as soon

as he was fed up with her and wished to marry a new wife, he would accuse the poor woman of obscenity and tarnish her reputation, and then would claim that the woman did not deserve to be his wife from the very beginning and that the marriage should be dissolved, and would claim that the dower he had paid to her be returned to him. The Holy Qur'ãn took notice of this practice and forbade it.

Islam has its own system of dower :

One of the undisputed laws in Islam is that a man has no right over the property or labour of a woman. He can neither order her to do a particular job of work for him, nor take with-out her permission the money which she may have earned by doing some work. In this respect a woman and a man have equal status, in contrast to what was the usual practice in Christian Europe up to the beginning of the twentieth century. According to Islam, a married woman is not under the control of her husband as far as her business dealings and her rights are concerned. She is perfectly free and independent in the execution of her business affairs. In spite of the fact that Islam gave woman this much financial independence from her husband, and in spite of the fact that it did not assign any right to him over her wealth, over her work or over her dealings, it did not annul the dower system. This in itself makes it evident that according to Islam it is not the meaning of the dower that the man should derive financial benefit from the woman, and should exploit her physical power. So we arrive at the conclusion that Islam has its own system of dower. This system of dower and its rationale should not be mistaken for the other systems of dower, and the objections that are reasonable when made against the other systems should not be considered applicable to this system too.

Rule of nature :

As we said in the former section, the Holy Qur'ãn explicitly mentions that the dower is a gift. The Qur'ãn considers this present

or gift to be obligatory. It has scrupulously observed the obscurities of human nature, in order that both man and woman, each of whom has been assigned his or her special role as regards their mutual affections, should not forget that the need for the dower is insisted upon. The role of woman is that she should respond to the love of man. A woman's love is good when it is a reaction to the love of a man, but not as the instigator of that love. An instigating love from a woman, that is, a love that begins from the woman without the man having desired her, is bound to fail, and is a cause of the diminishing dignity of the woman. On the other hand the love which develops in a woman in response to the love of a man will neither fail itself nor will it discredit the personality of the woman. Is this because a woman is not faithful and because the love of a woman is unstable and so one should not trust the love of a woman ?

This is both true and false. It is true when the love originates from the woman. If woman takes the lead in loving a man and makes him the object of her love, the fire of her love is soon extinguished. One should not trust this sort of love. And it is untrue when the fire of the love of a woman is kindled as a reaction to the true love of a man and in response to his sincere love. This kind of love is practically impossible to do away with. It fails only when man's love becomes cold, and then, of course, the woman's love comes to an end. The love which is natural to a woman is this form of love.

The reputation of a woman for faithlessness comes from the first kind of love, and the tributes that are paid to her faith-fulness relate to cases of love of the second kind. If society wishes to place the relations of a husband and wife on a sure footing, there is no alternative but to observe the path that the Holy Qur'ãn has ordained. One should keep the laws of nature in view, and should especially remember the respective roles of men and women in the matter of love. The law of the dower is in harmony with nature for the reason that it is the sign and indication of the fact that love started from the man, and that the woman is responsive to his love;

and so man, as a token of his respect, presents her with a gift. This is the reason that the law of the dower, which is an article of an absolute and fundamental constitution which was drawn up by the Designer of the human disposition, should not be annulled under the pretext of equality of rights for men and women.

As you have seen, the Qur'ãn made changes only in the customs, practices and laws of the pre-Islamic period in respect of dower, much against the will of the people of those days, while it could have annulled the dower and entirely relieved the people of that burden. So it cannot be said that the Qur'ãn does not attach any importance either way to the continuance or discontinuance of the dower.

Criticisms :

Now that you are familiar with the Islamic view and its rationale, it is better that you also hear the comments of the critics regarding this Islamic law.

Ms. Manuchahriyan, in her book *Intigad bar gavanin-e* asasi *va madant-e Iran* (Criticism on the Civil Law and Constitution of Iran), in the chapter that she starts off under the title of "Dower", writes :

"Just as a man must spend money to take possession of an orchard or a house or a mule, so he should spend money out of his pocket for the purchase of a woman, and, just as the price of a house, an orchard and a mule varies according to its being large or small, ugly or beautiful, useful or serviceable, the price of a woman also varies according to her ugliness and beauty and to her being wealthy or otherwise. Our kind and stalwart law-givers have drawn up twelve articles concerning the price of a woman, and their rationale is that if there were no question of money in this matter, the firm relationship of the husband and wife would become weak and would be likely to break up quickly."

Had the law of dower come from foreign sources, would it then also have been the object of so much ill-feeling, false accusation and disparagement? Maybe a person who wants to buy another person will give him some money; but does that mean that the custom of offering a present or a gift should be abolished? The source of the law of the dower which is made mandatory in the Civil Law is the Qur'ãn. The Qur'ãn explicitly mentions that the dower is nothing but a gift, a present. Besides that Islam has organized its laws in such a way that a man has no right to take economic benefit from the woman. In such conditions, how can the dower be referred to as the price of a woman?

You could possibly say that Iranians, in practice, do derive financial benefit from their wives. I accept that many Iranian men do. Nevertheless, how is this related to the dower? Men do not say that because they paid a dower, they should domineer our wives. The domineering of Iranian men over their wives is because of other reasons. Instead of reforming men, why should you destroy the law of nature and encourage evil? In all this talk and commentary there is only one implied motive, and that is to in-duce Iranians and all orientals to forget themselves, the philosophy of their lives, and their human standards, and adapt them-selves to a foreign mould, so that they may be made ready to be absorbed more easily.

Ms. Manuchahriyan says: "If woman is to be economically the same as man, then why should it be necessary to believe in maintenance and dower for her. Just as these precautions and provisions are not made for men, so, in the case of woman also, there should be no occasion for them."

If we examine this remark analytically, it means that in eras when people did not believe in the right of ownership and economic independence of women, dower and maintenance may have been, to a certain extent, reasonable, but that if a woman is given economic independence, as this independence has been given in Islam, then there is no reason for dower and maintenance.

These people have supposed that the purpose of dower is only so that, despite her being deprived of economic rights, money should reach her. Would it not have been better for them to have referred a little to the verses of the Qur'ãn, and to have pondered for a while over how the Qur'ãn has represented dower, and thus got to the core of its rationale? They could then have been proud that the revealed Book which is followed in their country contains such a high level of thought.

In issue no.89 of *Zan-e rũz,* page 71, after stating the miserable condition of women in the pre-Islamic period, and referring to the help given by Islam in this connection, the author of the forty proposals writes: "Because men and women are created equal, the payment of any sum or wages by one to the other has no logic and is not a reasonable thing. Just as man is in need of woman, man is also needed by woman. They are both created indispensable for each other, and are in an equal position in this respect. So, to make it compulsory for one to pay a sum to the other has no sense. Nevertheless, since divorce is in the hands of man, woman has no security for a shared life with man, and so a right is given to the woman that, besides the trust in the person of the husband, she may demand a sort of economic assurance and guarantee from man."

The same author writes on page 72 that if section 1133 of the Civil Law, which says that a man can divorce his wife any time he pleases, is amended, so that divorce does not depend on the sweet will and fancy of man, dower will completely lose the rationale for its existence.

All that we have said up to this time clearly shows the groundlessness of these ideas. It was made clear that dower is not a sum or wages, and that it is quite reasonable too. It is also evident that man and woman in their mutual need for each other are not alike, and that creation designed that they exist in two different modes.

The most fallacious of all is the reasoning of the above mentioned author who has interpreted dower as a financial security against man's right of divorce. He is altogether wrong to have claimed that the cause of Islam's ordaining the dower is this.

Such persons should be asked whether Islam gave the right of divorce to man so that woman should be in need of financial security, besides that, it would mean that the reason the Holy Prophet gave a dower to his wives was that he wanted to give them a financial security against himself. Similarly, it would mean that on the occasion of the marriage of 'Ali to Fãṭimah, he stipulated a dower for her so that he might obtain a financial security in favour of Fãṭimah against 'Ali, and thus find a source of confidence.

If it were so, why did the Holy Prophet advise women to give back their dower to their husbands and mentioned divine rewards for this? Besides that, why did he advise that the dower of a woman should as far as possible not be too much? Was there any other object in the eyes of the Prophet other than that the presenting of a gift called the dower by the man, and the giving back of the dower or something equivalent to it by the woman to the man should be a source of an increase in the affection and firmness in attachment between the husband and the wife?

If Islam's aim was that the dower should serve as a financial security, why does it say in the revealed Book: *And give the women their dowers as a gift spontaneous* (وَآتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً) (, and not: *And give the women their dowers as a security* (وَآتُوا النِّسَاءَ صَدُقَاتِهِنَّ وَثِيْقَةً).

Above all, the writer of the forty proposal thinks that the custom and practice of dower at the beginning of Islam was the same as it is now. Nowadays, no doubt, the practice is generally that the dower has an aspect of a guarantee and an undertaking, that is, the man makes an agreement for a certain amount in the form of dower, but the woman does not generally demand it,

except on the occasion of a difference or dispute that might arise between them. This kind of dower can transform itself into a security. In the early days of Islam, the practice was that the man used to give as a dower in money or in kind, anything that he undertook to part with. So it cannot be said that the object of Islam on ordering the dower was to provide woman with a financial security. History shows evidence that the Holy Prophet was never ready to hand over a woman to a man without the payment of the dower. An incident is reported with a slight difference between the Shi'ite and the Sunni books that a woman came to the Holy Prophet and stood before the gathering. " O Messenger of Allãh," she said, "accept me as your wife." The Holy Prophet, in respect of the request of the woman, kept silent and said nothing. The woman sat down in her place. One of his companions stood up and said, " O Messenger of Allãh, if you are not ready I am prepared to accept her as my wife."

The Holy Prophet asked : "What would you submit as a dower?" "I have not got anything" was the reply. "This cannot be. Go to your house; perhaps you will find something there to give as a dower to this woman," The Prophet said. The man went to his house, came back and said, "I could not find anything in my house". The Prophet said, "Go again and look well. If you can find a metal ring, even that would suffice" said the Prophet. He went twice and came back and said, "I cannot find even a metal ring in my house. I am ready to present her with the clothes that I am wearing as her dower". Another one of the companions, who knew the man, said: " O Messenger of Allãh, by Allãh, this man has no other clothes except those he is wearing. So half of the clothes may be assigned as the dower of the woman".

The Holy Prophet said: "If half of these clothes are to be the dower of the woman, who will wear which half? If one of them wears them, the other will remain undressed. No, it cannot be like this."

The man who had made the request sat down. The woman also waited in her place. The gathering took up some other topic and the discussion lasted for a long time. The man who had requested the hand of the woman started to go away, but the Holy Prophet called him.

“Come over here!” He came.

“Speak, tell me, can you recite the Qur’ãn?”

“Yes, O Messenger of Allãh. I can recite some of the surahs.”

“Can you recite from memory?”

“Yes, I can.”

“Very good. Now it is all right. So I marry this woman to you and her dower will be that you teach her the Qur’ãn.” The man took the hand of the woman and went away.

There are many other things which could be said concerning the dower, but we will close our discussion at this point.

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DOWER AND MAINTENANCE (3)

We have stated the Islamic view of dower and the ration-ale of dower. Now it is a suitable time to discuss the subject of maintenance.

We should take note beforehand that in Islamic laws, maintenance, like dower, has a status and position special and peculiar to it, and so it should not be confused with, or considered the same as what is the case in the situation that was or is now being witnessed in the non-Islamic world.

If Islam had given the right to man to avail himself of the services of woman, and to consider the returns of her labour and toils and virtually all the wealth that she earned as his own, the object and rationale of maintenance would have been evident. The reason would have been, obviously, that if some person makes use of an animal or another person to derive some financial benefit, he should necessarily provide the expenses for that animal or person's livelihood. If a carter does not give grass and oats to his horse, the horse will not draw his cart for him.

However, Islam does not recognize such a right for man. A woman is given the right of ownership: she can earn wealth, and man is not given the right to appropriate the wealth which belongs to her. Still, it is considered the duty of man to provide for the expenses of the family. He should defray the expenses of the wife, the children, the servant, the maid-servant, the house, etc. What is the reason for this?

Unfortunately our westernized people are not ready to think these matters over for a moment. They look into our faces and repeat exactly the same criticisms about the Islamic systems which occidentals repeat about their own systems of rights; and of course the latter criticisms are right.

As a matter of fact, if anybody says that the maintenance of woman in the west until the nineteenth century was nothing but a ration of food, drudgery, and the insignia of slavery, then he is right in his criticism. For if it was the duty of woman to carry out the housework of man for free and to have no right of ownership, the maintenance that was given to her was, no doubt, a kind of ration given to a prisoner, or fodder given to a beast of burden.

But, if, somewhere in the world, we come across a special law which relieves woman from the compulsory duty of carrying out a man's homework, gives her the right to amass wealth, gives her complete financial independence, and yet still exempts her from contributing to the family budget, that law must be based on some other rationale. The pros and cons of that rationale deserve to be fully studied and seriously examined.

The repression of European women up to the second half of the nineteenth century :

In his commentary on the Civil Law of Iran, on page 362, Dr. Shaygan has written :

"The right of independence that a woman has concerning her property and assets, and which Shi'ite jurisprudence has acknowledged right from the beginning is not to be found in ancient Greece or Rome or japan, or, till a short time ago, in the rights of most of countries. This means that woman has been denied the right to possess her property, just like a minor, a lunatic or someone forbidden by law. In England, where the personality of the woman was wholly obscured in the personality of her husband, two laws, one in 1870, and the other in 1882, were passed under the name of "The Married Woman's Property Act" and thus the interdiction was raised from woman. In Italy in 1919 A. D., a law removed woman from the category of interdicted persons. In the Civil Law of Germany after 1900, and in the Civil Law of

Sweden after 1907, a woman has had the same legal capacity as her husband.

"However, a married woman in Portugal or France is still on the list of interdicted persons, although Act 18 of February 1938 in France has amended the limits of the interdiction."

As you have seen, it is still under a century since the first law concerning a woman's financial independence from her husband (1882 in England) was passed in Europe, and, as they say, the interdiction was raised from married women.

Why did Europe suddenly grant financial independence :

Now, how was it that a century ago such an important event happened? Did the human feelings of the men of Europe suddenly come to the boil, and the oppressiveness of their treatment become revealed to them?

Listen to the reply to this question from Will Durant. In his *The Pleasures of Philosophy,* he begins an inquiry under the heading "Reasons". There he comments upon the reasons why freedom was granted to the women of Europe, and it is there that we sorrowfully come across a dreadful reality. It is disclosed, that the European woman ought to feel grateful for her freedom and her right of ownership to machines and not to man, and should bow her head to the great cogs of machinery, and not before European man. It was the greed and covetousness of mill-owners pushing them to make more profit and to pay less wages which caused them to put up the draft of the Act for the financial independence of women in the British Parliament.

"A century ago, in England, men found it hard to get work, but placards invited them to send their wives and children to the factory gate. Employers must think in terms of profits and dividends, and must not be distracted by the considerations of morals, institutions or states. The men who unwittingly conspired

to 'destroy the home' were the patriotic manufacturers of nineteenth-century England.

"The first legal step in the emancipation of our grandmothers was the legislation of 1882, by which it was decreed that thereafter the women of Great Britain should enjoy the unprecedented privilege of keeping the money they earned. It was a highly moral and Christian enactment, put through by the factory-owners in the House of Commons to lure the ladies of England into attendance upon their machines. From that year to this the irresistible suction of the profits motive has drawn women out of the drudgery of the home into the serfdom of the shop." (pp. 131 — 132)

As you see, it was the capitalists and mill-owners of England who, simply for their material gain, took this step "in the interest of women".

The Qur'ãn and the financial independence of woman :

One thousand four hundred years ago, Islam passed this law and ordered:

لِلرِّجَالِ نَصِيبٌ مِمَّا اكْتَسَبُوا وَلِلنِّسَاءِ نَصِيبٌ مِمَّا اكْتَسَبْنَ

To the men a share from what they have earned, and to the women a share from what they have earned. (4:32)

In this verse the Qur'ãn considers men to have a right to the fruits of their labour and efforts. In exactly the same way it considers women to have a right to the fruits of their labour and. efforts.

In another verse the Qur'ãn ordained :

لِلرِّجَالِ نَصِيبٌ مِمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ
مِمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ

> ***To the men a share of what parents and kinsmen leave, and to the women a share of what parents and kinsmen leave.*** (4:7)

It means that for men there is a share in the wealth which their parents or relatives leave behind at death, and for women there is a share in what their parents and kindred leave behind on their death.

This verse has established the right of inheritance of women. There is a long history regarding the dispute as to whether a woman has a right of inheritance or not, to which we will refer, if God wills, afterwards. The Arabs of the pre-Islamic period did not wish to grant the right of inheritance to women, but the Holy Qur'ãn firmly established that right.

A comparison :

So the Qur'ãn gave financial independence to women thirteen centuries before European women achieved it, with the difference that, first of all, the motive of Islam in giving financial independence to women was nothing but Islam's humanitarian aspect and its sense of divine and communal justice. In the case of Islam, there were no such initiatives as the avarice of the factory-owners of England, who, in a desire to get more and more profits, got this law passed, and then trumpeted through-out the world that they had given official recognition to female rights and had acknowledged the equality of the rights of men and women.

Secondly, Islam gave financial independence to women, but, according to Will Durant, did not destroy family ties, and did not ruin the basis of the family. It did not set up wives to confront their husbands and daughters to confront their fathers in rebellion and revolt. Islam brought about a great social revolution with these two verses, but quite a peaceful, harmless and safe one.

Thirdly, all that the western world did, according to Will Durant, was that it relieved woman of the drudgery of her house-work and imprisoned her in stores and factories for hard work and toil. In other words, Europe took one set of collars and chains off the body of woman, and stuck on another set, no less heavy than the former ones. But Islam freed woman from the bondage and slavery of man within his house and outside it, on the land, and, by making it compulsory for man to provide for the upkeep for the whole family, freed woman from all sorts of obligations and impositions on her own spending, as also the spending of the other members of the family. In the eyes of Islam, woman, despite her having a right in agreement with the human instinct to earn, save and add to her wealth, is in no manner responsible for pro-curing the necessities of life. These things should not put a strain upon her, and should not deprive her of her pride, beauty and honour, which are always associated with her peace of mind and tranquillity.

Anyhow, what can we do? The eyes and ears of some of our writers are too tightly closed for them to think over these in-disputable historical and philosophical realities.

Criticism and reply :

Ms. Manuchihriyan in her book criticising the constitutional and Civil Law of Iran says on page 37:

"Our Civil Law requires, on the one hand, that a man give maintenance to his wife; that is, he should provide for her dress, food and dwelling. Just as an owner of a horse or mule provides for its food and stabling, so the owner of a woman should make her reach this lowest standard of livelihood. On the other hand, it is not clear why in Art. 1110 of the Civil Law it is particularly mentioned that during the period of ***'iddah*** after the death of the husband (a period during which the widow may not remarry) the woman is not entitled to maintenance. On the occasion of the death of her husband, a woman badly needs sympathy and condolence

condolence and naturally she wants that, after the loss of her owner, she should not be put to financial difficulty and distress. You may possibly say, 'You are so fond of freedom and you wish that you should be equal to men in all respects, so why should you desire here that a woman should remain the ration-eater and slave of man, and that man should have kept in view that after his death also her capacity as a ration-eater should continue?' We in reply say that, in accordance with the same rationale of the slavery of woman on which foundation the structure of this Civil Law is raised, it was proper that the law-makers should themselves have taken measures to provide for the maintenance of the woman, and that the Law should have been compassionate on this subject."

We ask this author from where in the Civil Law of Iran and from where in the law of Islam (or according to her that philosophy of female slavery) she has discovered that man is the owner of woman, and that the cause of man's giving maintenance to woman is that woman is the property of man? What kind of owner is it who is not entitled to ask his slave to give him a cup of water? What kind of owner is it whose slave may do any work for the slave's own benefit and not for his owner's? What sort of owner is it whose slave may demand, if she wants, wages for the smallest piece of work the slave does for him? What kind of owner is the man who he has no right to force his slave to suckle his baby for nothing, the child she has herself begotten in the house of her owner?

Secondly, is everyone who is maintained by some other person his slave? According to Islam, and according to every law, it is the obligation of the father, or the father and mother, to maintain their children. Does it follow that under every law of the world, children are considered as the slaves of their parents? According to Islam, the father or mother, if they are destitute, must be maintained by their sons, without the sons being entitled to impose their will upon them. Should we say that Islam considers fathers and mothers the property of their own sons?

Thirdly, and most surprising of all, is that she asks : Why, during the period of *'iddah* after the death of the husband maintenance is not obligatory, whereas the woman at that time is most needful of the money of her husband.

It seems that the worthy author lives in the Europe of a century ago. The basis of the maintenance of the woman by the man is not her need. If, according to Islamic laws, a woman, as long as she lives with her husband, has no right of ownership, it would be right that immediately after the death of her husband, the condition of woman is disturbed. But when a law which gives the right of ownership to the woman, and says the women, can keep her own wealth, even though all her expenses are met by her husband, why should it be necessary that after the household is disturbed, the woman should, for a period continue to get maintenance. Maintenance is a gift for a man's household, but when the household itself is shaken up, it is not necessary that this right should continue.

Three kinds of maintenance :

In Islam there are three kinds of maintenance:

The first kind is what an owner should spend on what is owned by him. The expenses incurred by someone who owns animals comes under this heading. The basis of this kind of maintenance is ownership, and the fact of being owned.

The second kind is the maintenance which a person spends for his children, when they are under-age or without any resources, or which he spends on his father and mother when they are in need. The basis of this right of maintenance is not ownership and the state of being owned, but these are the rights which the children naturally, have from the persons who are responsible for their coming into existence, and the right which a father and a mother have on account of their sharing in the birth of their sons and on account of the sufferings they underwent during the upbringing of

their sons. This maintenance depends upon the inability of the person whose maintenance is obligatory.

The third kind of maintenance is that which a man spends on his wife. The basis of this maintenance is neither the link of ownership and of being owned, nor the natural right mentioned in connection with the second kind, and neither does it depend on incapacity, inability or poverty.

Suppose the wife is a millionaire and has an enormous income, and the husband has fewer resources, still the husband has to arrange for the family expenses and also the personal expenses of the wife. The difference which this kind has with the first and the second kind is that if the man who is under the obligation does not perform his function as regards the first and the second kind, and does not give the maintenance, he is a sinner; but non-fulfilment of that function does not take the form of a recover-able debt or of a legal liability. In other words that default creates no legal cause of action. But in the third kind, if someone having that duty ignores it, the wife is entitled to take preceding against him in a court of law, and, if he is proved to be in fault, to recover the maintenance from the man. What is the basis for this kind of maintenance? We shall discuss this thing in the next section.

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DOES MODERN WOMAN NOT WANT A DOWER OR MAINTENANCE?

We have pointed out that, according to Islam, it is the function of the husband to provide for the family expenses, including the personal expenses of the wife, and that the wife has no liability in this respect. The wife may have enormous wealth and may possess many times more wealth than the husband does, but still she has no obligation to contribute towards the family expenses. The contribution of the wife towards family expenses in money or in the form of work is optional, and depends upon her own will and inclination.

Despite the fact that the expenses of the wife are a part of a family's expenses and are the responsibility of the husband, he, in view of Islam, is not entitled to take financial benefit from, or to have a share in, the proceeds of the wife's labour and earnings. He cannot exploit her. The maintenance of the wife, in this respect, is like the maintenance of a father and mother which, in certain circumstances, it is the duty of a son to provide, but in lieu of the fulfilment of which the son is not entitled to any right in return for the services he has rendered.

An advantage to women in financial matters :

Islam has given women an unprecedented advantage in financial and economic matters. On the one hand, it has given her full financial independence and freedom, and has prevented man from having any power over her property and work. It has taken away from man the right of guardianship over the affairs of woman, such as existed in historical times and was customary in Europe up to the beginning of the twentieth century. Over and above that, by freeing her from the responsibility of family expenses, Islam has exempted her from any liabilities or obligations to run after money.

When those who worship the west wish to criticise this law, in the name of protecting women, they find no alternative except to have recourse to the invention of a bold lie. They say that the reason behind maintenance is that man considers himself the owner of woman and engages her in his service. Just as the owners of animals are obliged to bear their expenses so that they may ride the animals, or so that the animals will carry loads for them, the law of maintenance has demanded, for the same purpose, the provision of the lowest, hand-to-mouth subsistence for woman.

If somebody were to take upon himself the task of attacking Islamic law with the criticism that this law has unduly favoured woman and is not fair to man and has treated him as a wage-less attendant of woman, he could more plausibly bring forward arguments in favour of his plea and give it an ostensibly more realistic form than the person who attempts to criticise this law in the name of, and for the protection of, women.

The reality is that Islam does not seek to devise a law in favour of women and against men, nor in favour of men and against women. Islam is neither a partisan of woman nor of man. In its laws, Islam has kept in view the prosperity of the woman and the man, and the children who are to be brought up under their care, and has, in the long run, kept the prosperity of all human society in view.

According to Islam the prosperity of men, women, their children and the whole of human society depends on the condition that the rules and laws of nature, which are conditioned and shaped by the strong and prudent hand of the Creator, should not be blindly acted upon, without any insight into their wisdom.

As we have repeatedly mentioned, Islam has always observed the rule that man is a symbol of humility and need, and woman a symbol of needlessness. Islam recognizes man as a purchaser and woman as the owner of necessary goods. In the eyes of Islam, when the married couple live together, it is the man who should

consider himself the beneficiary and should bear the family expenses. The man and the woman should not forget that in the matter of love two different roles are assigned to them. The union will be stable, firm and harmonious only when the man and the woman behave within their natural roles.

Another reason why the maintenance is obligatory on the husband is that the pain, suffering and loss of energy involved in the birth of the next generation is left by an act of nature to be supported by the woman. Man's natural function in this connection is only an act of pleasure and nothing more. It is the woman who is incommoded by menstruation who undergoes the burden of the period of pregnancy and the indispositions peculiar to it; it is she who bears the hardships of childbirth and the resultant dangers; it is she who nurses and takes care of the child.

All the above mentioned things drain the physical and nervous strength of the woman, and sap the energy which she could have spent in work and earning money. In the face of these hard facts, if it were decreed that man and woman should be equally responsible for contributions to the family budget, and if the law did not come to her support, woman would be placed in a pitiable situation. These are the reasons that even among animals who live in pairs the male always stands in sup-port of the female and helps to find food for her during her period of confinement when she gives birth to the offspring.

Besides that, man and woman are not created the same as far as their power to perform difficult, economically productive work is concerned. If there is a case of estrangement and the man takes a stand against the woman and says that he will not spend even the least amount of his earnings on her, the woman is never able to earn a sufficient amount to reach the standard of the earnings of the man.

Leaving aside all this, above everything else is the fact that

woman is in need of more money and wealth than man. Articles of luxury and ornaments are the primary needs of a woman. What a woman spends on articles of luxury, on make-up and self-adornment is equal to the expenses of many men. This inclination towards adornment creates by itself an inclination towards variety and fancy in woman. For a man, simple clothes, as long as they are fit to be worn and are not old and worn out, will do, but for a woman what is the case? For a woman a dress is fit to be worn as long as it is seen to display some new charm. How often do we wish that a dress or some jewellery should have more value for a woman than merely to be worn once! The energy and effort of a woman in earning wealth is less than that of a man, but a woman's capacity to spend wealth is many times more than a man's.

Besides that, in order for a woman to remain a woman, that is, to maintain her beauty, her elegance and pride, a much more comfortable, peaceful, and easy-going life is required, and fewer worries about necessities. If women were obliged like men to be always in search of and looking for resources and running after money, her pride would dwindle, and those wrinkles and knots would appear on her face which economic worries cast even on the face and forehead of man. It has been heard very often that those poor western women who are obliged to struggle for their livelihood in workshops, factories and offices, envy the life of eastern women. It is evident that a woman who has no peace of mind and does not find time to attend to herself will also not be a source of delight and happiness for her husband.

The result is that not only is it proper for the woman, but rather it is in the interest of the man and the well-being of the household also, that she should remain exempt from the compulsory struggle to finding the means and resources for living. Man also desires that his home should be a place of tranquillity, a place for rest from fatigue where the worries of the outside world may be forgotten. His wife has the power to make the home a place of repose and tranquillity and a place to forget anxieties

and worries, and she herself should not be exhausted and worn out by the fatigue caused by the outdoor tasks a man is required to do. How pathetic is the condition of a man who enters his house and finds his spouse more tired and more weary than he himself. Thus the wife's comfort, well-being, happiness and peace of mind is of abundant value for the husband also.

The secret of a man readily giving money to his wife, the money which he brings home after strenuous labour and hard work, to be spent by her liberally as she likes, is that the husband understands that his spiritual needs are with his wife. He has realized that God has placed in his wife the source of his comfort and the solace of his spirit (وَجَعَلَ مِنْهَا زَوْجَهَا لِيَسْكُنَ إِلَيْهَا) *And made of him his spouse that he might rest in her.* (7:189) He has understood that the better the arrangements he makes for the requirements, comforts and tranquillity of his wife, the better indirectly, he makes his own happiness and the comforts of his own home. He has come to understand that out of the two married people at least one should not be under the strain of struggle and fatigue, so that that one may be the source of comfort to the spirit of the other. In this division of work, the one who is more competent to step into the struggle of life is man, and the one who can better comfort and tranquilise the spirits of the other is the woman.

Woman is created in need of man in the material and financial aspects of life, and, likewise, man needs woman on the spiritual side. Without dependentence upon man, woman cannot defray the expenses of her excessive material requirements which are many times those of man. Due to this Islam has specified the woman's legal spouse as the only centre of her independence.

If woman wished to live as she desired but not to depend exclusively on her legal husband, she would have to depend up-on other men. This is unfortunately the case. Examples are easily found and the number is on the increase.

The purpose of propaganda against maintenance :

The women-hunters have understood this point, and one of the reasons for the propaganda against the maintenance of wife by her husband is this very thing. If excessive demands for money by the wife culminate estrangement, the woman can easily fall prey to the huntsman. If you look into the extravagant rationale behind rights that is being inculcated in the minds of women in certain institutes and organizations you will see exactly what I mean.

There is not the slightest doubt that the annulment of maintenance is a cause for the increase of promiscuity.

How is it possible for a married woman to separate the conduct of her life from man, and to manage her affairs according to her own preferences?

If you want to know the true position, it is the anxiety also of those men who are tired of the sumptuousness and extravagance of their wives which is a factor helping the movement to annul maintenance. These people desire that, in the name of freedom and equality, and by the endeavours of women them-selves to attain these goals, they should take their revenge on women for their luxuriousness and extravagance.

In *The Pleasures of Philosophy,* after he has defined modern marriage in the words, "legal marriage, with legalized birth-control, and with the right to divorce by mutual consent for child-less couples, usually without payment of alimony" (p. 150), Will Durant says: "Very rapidly the luxurious ladies of the bourgeoisie are bringing down upon all their sex the revenge of the tired male; marriage is changing to a form that will not tolerate the unproductive women who are the ornament and horror of so many expensive homes; the men are inviting their modern wives to earn for themselves the money which they are to spend. For companionate marriage provides that until maternity is in the offing,

the wife shall go to work. Here hides the joker by which the liberation of woman shall be made complete: she shall be privileged henceforth to pay her fare from A to Z. The Industrial Revolution is to be carried out to its logical and merciless conclusion, woman is to join her husband in the factory; instead of remaining idle in her bower, compelling the man to produce doubly as a balance to her economic sterility, she shall become his honoured equal in toil as in reward, in obligations as in rights." *(ibid.,* p.151)

Wealth in place of husband :

The point that the natural functions of a woman in giving birth to children necessitate that in monetary and economical matters she should have something to rely upon is not something which can be denied.

In today's Europe there are persons who, in support of woman's freedom, have gone to the extent of advocating the return of the matriarchal system and banishing the father altogether from the family circle. They believe that with the full economic independence of woman, and her equality to man in all respects, man will, in future, be considered an extra limb, and will be dropped from the family for ever.

Quite simultaneously the same individuals invite the state to come forward as a substitute of the father. To mothers who would never be able to establish and form a family and perform all the necessary duties single-handed, the state, they say, should make grants of financial assistance, so that they do not need to refuse to become pregnant, and the continuation of society in the next generation may not be interrupted. In other words, the mother of a family who lived on maintenance, and, as those who attack this position put it, has been the property of her husband, will henceforth live on the maintenance of the state, and will be the property of the state. The duties and the rights of the father should be transferred to the state.

How sincerely we wish that those individuals who, with a pick-axe in their hands, blindly and indiscriminately demolish the equilibrated structure of our sacred homes which has its foundation in the sacred revealed law could think over the consequences and could look ahead of them and see the light ahead of them.

In his book *Marriage and Morals,* Bertrand Russell discusses certain cultural interferences and the welfare works of the state. Concerning children he says :

“There is another powerful force which is working in the direction of the elimination of the father, and this is the desire of women for economic independence. The women who have been most politically vocal hitherto have been unmarried women, but this state of affairs is likely to be temporary. The wrongs of married women are at the moment much more serious than those of unmarried women ... There are two different ways in which married women might acquire economic independence. One is that of remaining employed in the kind of work that they were engaged upon before marriage. This involves giving their children over to the care of others, and would lead to a very great ex-tension of crèches and nursery schools, the logical consequence of which would be the elimination of the mother as well as the father from all importance in the child’s psychology. The other method would be that women with young children should receive a wage from the State on condition of devoting themselves to the care of their children. This method would, of course, be not alone adequate, and would need to be supplemented by provisions enabling women to return to ordinary work when their children ceased to be quite young. But it would have the advantage of enabling women to care for their children themselves without degrading dependence upon an individual man.

“Assuming such a law to have been passed, its effects up-on family morals will depend upon how it has been drafted. The law may be so drafted that a woman receives no payment if her child is illegitimate; or again, it might be decreed that if she can be proved

even once guilty of adultery, the payment should be made to her husband instead of her. If such is the law, it will become the duty of the local police to visit every married woman and make an inquisition into her moral status. The effect might be most elevating, but I doubt whether those who were being elevated would altogether enjoy it. I think there would presently come to be a demand that police interference should cease, with the corollary that even the mothers of illegitimate children should receive the allowance. If that were done, the economic power of the father in the wage-earning class would be completely at an end, and the family would probably cease after a time to be biparental, the father being of no more importance than among the cats and dogs.

"I think that civilization, at any rate as it has hitherto existed, tends greatly to diminish women's maternal feelings .. . It is probable that a high civilization will not in future be possible to maintain unless women are paid such sums for the production of children as to make them feel it worth while as a money-making career. If that were done it would, of course, be unnecessary that all women, or even a majority, should adopt this profession. It would be one profession among many others, and would have to be undertaken with professional thoroughness. These, however, are speculations. The only point in them that seems fairly certain is that feminism in its later developments is likely to have a pro-found influence in breaking up the patriarchal family, which represents man's triumph over women in prehistoric times. The substitution of the State for the father, so far as it has yet gone in the West, is in the main a great advance."

According to these supporters of the material independence of women, the annulment of maintenance would, according to the above statements, bring about the following results. The rejection and banishment of the father from the family, or at least the father's diminishing importance, and a return to the age of the matriarchy, the State taking the place of the father,

together with enfeebled maternal feelings, and a situation in which mothers, instead of having the attachment of love, will be reduced to the position of persons having a certain occupation and duty and having a certain job as a source of their earnings.

It is obvious that the consequence of all this is the complete ruin of the family, which will undoubtedly be succeeded by the ruin of humanity. Everything shall be put right, and only one thing will be missing, and that will be the prosperity, the pleasure and the enjoyment of those intellectual delights peculiar to the affections of the home.

Anyhow, my contention is that even the supporters of the independence and complete liberty of woman, and the upholders of the total banishment of the father from the family, consider that the natural function of a woman in giving birth to children requires some money or some assistance, and even, it may happen, wages and rent, but they consider it the duty of the State to give that right, as opposed to the father whose natural duty requires no fee.

In the International Labour Laws the minimum wages granted to a workman include the necessities of life for his wife and children. This means that the International Labour Laws officially recognize the right of maintenance for the wife and children.

Is the Declaration of Human Rights an insult to woman?

In the Universal Declaration of Human Rights, Article 23, clause 3, it is written : “Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity. . .”

In Article 25, clause 1, it says: “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services,. . .

In the above two articles of the Declaration it has indirectly been confirmed that every man who establishes a family should bear the expenses and the cost of maintenance of his wife and children. The money spent on them is to be reckoned as the necessary expenses of that man.

In the Declaration, despite explicitly mention that men and women have equal rights, the fact of the husband's giving maintenance to the wife has not been considered incompatible with the equality of rights. Therefore, those persons who every now and then invoke the authority of the Declaration of Human Rights and its approval in the two Houses of the Iranian Parliament should consider maintenance as a settled question. Would the worshippers of the west, who call everything which has an Islamic colour reactionary and outdated, allow themselves to be disrespectful in the sacred presence of the Declaration of Human Rights as well, and continue to think of maintenance as bearing the traces of the ownership of man, and the slavery of woman?

What is more, in its Article 25, the Declaration says: "Every-body has the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."

Here, not only does it treat the loss of the husband as a loss in the means of livelihood for a woman, but it has included widows in the same rank as the unemployed, the sick and those physical disability. Is it not a grave insult to women? If in any of the books or any legal work of the east an expression like this had been found, the wailings of the objectors would have reached the skies, as we ourselves witnessed in certain cases in respect of the laws of Iran.

Nevertheless a reasonable man, who is not biased and prejudiced, and has his eyes on all the sides of a question, will see that neither the law of creation, which has made man one of the means of a woman's livelihood, nor the Declaration of Human

Rights, which has included widowhood as a loss of the means of sustenance, nor finally the law of Islam, which has considered woman as entitled to maintenance has insulted her. The fact that a woman is created in need of man, and that the husband is considered to be the source of dependence of the wife is only one aspect of the problem.

The law of creation created man and woman in need of each other with a view to fitting man and woman more firmly together, and making the home, which is the basis of the real happiness of man, stronger and more secure. If, in monetary matters, it has made man the source of dependence of woman, in spiritual tranquility it has made woman the source of dependence for man. These two different requirements make them more close and united to each other.

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PART NINE

THE QUESTION OF INHERITANCE

* **Islam corrected irregularities in women's inheritance.**
* **The situation concerning women's inheritance is the result of dower and maintenance and not the cause of it.**
* **If only the economical aspect were considered, Islam would not have allowed any difference between what a man and what a woman inherits.**
* **The fact that a man inherits twice as much as a woman is the result of impositions on a man's expenditure from other directions.**

THE QUESTION OF INHERITANCE

The old world either gave absolutely no inheritance to women or, when it was given, the woman was treated as a minor, which meant that she was not given independence and the status of a person having rights. Under the old laws of the world, if inheritance was occasionally given to daughters, it was never given to the daughter's children, while a son could inherit himself, and his children could grow up as the successors to their father's property as well. In some other laws of the world which gave an equal inheritance to women and men alike, but not in the shape of a specified share, it was what the Qur'ãn mentions as (نَصيباً مَفْرُوضاً) (i.e., *a fixed share to which she was entitled),* but it took this form: a person was entitled, if he so liked, to make a will in favour of his daughter as well.

The history of women's inheritance is long. Scholars and learned persons have extensively examined it, and have left behind a vast body of investigations and writings on this subject which can be studied. I do not think it necessary to quote from their writings and their observations. The summary of these writings is as we have mentioned above.

The cause of woman's being deprived of inheritance :

The real cause of a woman's being deprived of inheritance was to prevent the transfer of family property to another family. According to the old idea, the role of the mother in the birth of a child was considered to be insignificant. Mothers were considered as mere containers in which the man's sperm developed, and out of which a child came into existence. For that reason they believed that the children of someone's son were the issue of a man, and thus they were a part and parcel of his family. On the other hand, the children of his daughters were not his children, but the children of the husband of the daughter, and they belonged to the family of the husband of the daughter. Consequently, if a daughter inherited, and afterwards her children succeeded her, that would cause a situation where the wealth of one family would pass on to a different family.

In the book, *Irth dar huquq-e madani-e Iran* (Inheritance in the Civil Laws of Iran) written by the late Dr. Mũsã 'Amīd, on page 8, after his remark that 'in ancient times it was religion which laid the foundations for the formation of families and not natural ties', he says :

"The religious spokesmanship of the family (under the patriarchal system) was with the grandfather of the family, and after him, the religious rites and rituals of the family were per-formed only by the male children, generation after generation. The ancients considered that the male children were the only source of continuation of their lineage. The father of the family, life-giver to his son as he was, also transferred his religious beliefs and the religious rituals, the right to keep the Fire alive, and the right to recite special prayers also. * As is mentioned in the Hindu Vedas and in the laws of Greece and Rome, the power of generation is confined to men, and the result of this antiquated belief was that the family religions were the special concern of men.

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* This describes the situation in Ancient Iran. *(tr.)*

Women had no business and concern with religion except through their fathers and husbands . . . and because they had no hand in religious rituals, they were naturally deprived of all family privileges. Afterwards, when with the improvement of the economic situation an occasion for inheritance arose, women were deprived of that right."

There were other reasons also for woman's being deprived of inheritance. One of them was their weakness in combat. In societies where preferences and prerogatives were based on heroism and valour and one war-faring person was preferred to a hundred - thousand non-warlike persons, woman was naturally deprived of inheritance because of her weakness in the performance of acts of defence and bravery.

Arabs of the pre-Islamic age were against woman's receiving inheritance for this very reason, and when there was a male member of a family, however distant in the ranks of inheritance he may have been, they never gave inheritance to a woman. So, when the verse of inheritance was revealed and it distinctly stated:

لِلرِّجَالِ نَصِيبٌ مِمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ نَصِيبًا مَفْرُوضًا .

> *To the men a share of what parents and kinsmen leave, and to the women a share of what parents and kinsmen leave, whether it be little or much, a share apportioned.* (4:7)

it was rather a shock for the Arabs. Incidentally in those days the brother of Ḥasan ibn Thabit, the well-known poet of the Arabs, died and left behind him a wife and a few daughters. The sons of his uncles seized all his property, and spared nothing for his wife and daughters. The wife of the dead man brought a complaint against them before the Holy Prophet. The Prophet called them

before him. They submitted that woman is not in a position to arm herself and fight against an enemy. "It is we who have to take the sword in our hands and defend ourselves and these women." So wealth should also belong to man. Nevertheless, the Holy Prophet then recited to them the commandment of God.

Inheritance of an adopted son :

In pre-Islamic days, the Arabs sometimes adopted someone as their son, and, as a result, that adopted son was considered to be a successor when the man died, like a real son. The custom of adoption existed in other communities among which were ancient Iran and Rome. According to this custom, the adopted son, because he was exactly like a son, was entitled to all the privileges to which the real daughters of the deceased were not entitled. One of these privileges was that the adopted son was to inherit from the deceased. There was another similar privilege and consequence which was that it was considered forbidden to marry the woman to whom the adopted son had been married. The Qur'ãn disposed of this custom also.

Inheritance by a confederation :

The Arabs had another custom regarding inheritance which was also abolished by the Holy Qur'ãn. That custom was of 'confederation'. This meant that two strangers would enter into a pact that the blood of one was the blood of the other, and an attack on one was the attack on the other, and each one was entitled to inherit from the other. According to this pact, the two non-kindred persons defended each other from attacks during their life-time, and v,hoever died earlier left his property to the other.

Woman as a part of the share of inheritance :

Arabs sometimes counted the wife of the deceased as part of his property and holdings and took possession of her as a share in the inheritance. If a man had a son by some other wife, that son could,

in token of his possession, threw a cloth on the face of that woman and count her as a part of his share. It depended upon his inclination whether he entered into wedlock with her or whether he gave her in wedlock to another person and received her dower for himself. This custom was not confined to Arabs only, and the Qur'ãn abolished it.

In old Hindu, Japanese, Roman, Greek and Iranian laws, very many unjust discriminations are to be found. If we were to quote the observations of those persons who have made a thorough study of the subject, we would require a great deal of space.

Woman's inheritance in the Sassanid period in Iran :

The late Sa'īd Nafisi writes on page 42 of his book "The Social History of Iran from the Sassanid Period till the Overthrow of the Umayyids"* :

"In connection with the establishment of a family, another notable point in the Sassanid civilization was that when a son reached the age of puberty, his father would give one of his several wives to him in marriage. Another mentionable fact is that in Sassanid civilization, woman had no individuality and thus no rights, and a father and a husband had immense authority to keep a hold over them. When a girl reached the age of fifteen, and reached full maturity, the father, or the head of the family, was required to give her in marriage, but the marriageable age for a son was considered to be twenty years. In the matter of marriage the consent of the father was a necessary condition. The girl who went over to her husband without such consent did not inherit from her father or guardian, and in the selection of a husband for her-self she was not considered to have any right. However, if after reaching puberty, her father neglected to give her in marriage, she had a right to have recourse to an illegal

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* *Tãrīkh-e ijtimã'-e Iran az zamãn-e sãsãniyãn to inqirãḍ-e Umawiyãn*

circumstances she was not entitled to inherit from her father.

"The number of women that a man could keep had no limit. From Greek documents, it transpires that a man sometimes had several hundred women with him in his house. The principle of marriage in the Sassanian period, as recorded in the religious books of the Zoroastrians, is very complex and confusing, but there were five customary kinds of marriage.

" 1. A wife who was married with the consent of her parents, and who gave birth to children who were hers in this world and hereafter, was called "*pãdishah-e zan*" (queen of the wives).

" 2. A wife who was the only child of her father and mother, was called *"fig zan"* (unique wife). The first child she gave birth to was given over to her parents so that the child could fill the place of his or her mother who had gone from the house and had married. Thereafter she too was spoken of as "*pãdishah-e zan*"**.**

" 3. If a man died in his youth without marrying, the members of his family used to give a dower to a woman from another family, and take her to the house of a man not of their family, and that woman was called *"sidhar zan*" (adopted wife). Any child that she gave birth to was to be considered in the next world as one half of the young man who had died and the other half of the man still alive.

" 4. A widow who married for the second time was called *"chigar zan"* (servant wife). If she had no issue by her first husband, she was given the status of *"sidhar zan".*

" 5. A woman who went to a husband without the consent of her father and mother was considered to be of the lowest status, and she was called *"khud sarãy-e zan*" (wilful wife), and did not inherit from her father or mother. Nevertheless, when her son reached the age of puberty and accepted her as his "*ũg zan*"*,* her status changed."

The share of women in inheritance according to Islam :

In Islamic laws, none of the incongruities of the past are found in the question of inheritance. The matter regarding which those who claim equality of rights raise objections is that the share of a woman in inheritance according to Islam is half the share of a man. In Islam, a son inherits twice as much as a daughter, a brother twice as much as a sister, and a husband twice as much as a wife. It is only in the case of the father and mother that, if the deceased has children and his father and mother are also alive, both the father and the mother will inherit one sixth of the property of the deceased.

The fact that a woman inherits one half of the share of a man is due to a special state of affairs. Because a woman is en-titled to a dower and maintenance, and because she is incapable of taking an equal part in the defence of the community, the fact that her share is one half of her brother's is, to some extent, the result of a law of recompense. In other words, the special inheritance position of woman is founded upon the special place she occupies as regards dower and maintenance and so forth

In accordance with the arguments which we have put for-ward in the previous chapters, Islam has acknowledged dower and maintenance as a necessary and effective factor in strengthening the mutual relationship between husband and wife, safe-guarding the tranquitility of the household, and establishing unity between husband and wife. In the eyes of Islam, the abolishing of dower and maintenance, but especially maintenance, would cause a shaking in the foundations of the household and the wife being drawn towards promiscuity.. As Islam considers dower and maintenance to be obligatory, the wife is automatically exempted from providing for the family budget, and that responsibility has been laid upon the husband. Islam seeks that this responsibility should be recompensed by inheritance, and so twice as much of the share of inheritance has been allocated to man as to woman. In short, it is dower and maintenance which has decreased the woman's share in inheritance.

An objection by the worshippers of the west :

When a group of worshippers of the west give vent to their utterances concerning this problem, and make an issue of a woman's share being less than a man's in their propaganda against Islam, they start on the subject of dower and maintenance. They say: "Why should we proceed in a circuitous and a round-about way? Why should we not give equal shares to man and to woman, so that we should not be obliged to compensate the deficit by way of dower and maintenance?"

Firstly, these busybodies have mistaken the cause for the effect and vice versa. They consider that dower and maintenance is the effect of the special situation that holds as regards a woman's share in inheritance, whereas in fact, that special situation is the effect of dower and maintenance. Secondly, they think that what really matters is the financial and economic aspect of the question. Obviously, if only the financial and economic aspects were in view, there would have been no justification for dower and maintenance nor for the share in inheritance being unequal. As we pointed out in the preceding article, Islam has kept in view many aspects of the question some of which are based on nature and some psychological. On the one side there are the excessive requirements and problems of woman in connection with childbirth, while man is free from all this. On the other side there is her lesser ability to produce and earn wealth. Thirdly, there is the fact that her consumption of wealth is more than of man. Moreover, the special psychological and intellectual considerations regarding men and women, in other words, the characteristic psychology of men and women and the fact that a man should always be there as the person responsible for the expenses of women, and, lastly, the subtle psychological and social considerations which are the source of strength in family ties; all these aspects have been kept in view by Islam. It has considered dower and maintenance positively necessary. These necessary and unavoidable matters are an indirect cause of the burden on the man's expenses. This is the reason that Islam has ordained that in recompense for

the responsibilities that have been laid upon man's shoulders, he should have twice as much share in inheritance as a woman. Any-how, the financial and economic aspect is not the only one and it is not the only goal aimed at in Islamic law, so the question proposed: "Why, in one place, is the share of woman cut to half, and in another place recompensed?" does not arise.

The objection of atheists at the beginning of Islam about inheritance :

We pointed out that, in the view of Islam, dower and maintenance are the cause, and the situation regarding a woman's share in inheritance is the effect. It is not only recently that questions regarding this part of the law have been raised, for it has been under discussion from the early days of Islam.

There was a man called Ibn Abi 'l- 'Awjã' , who lived in the second century of the Hejra, and had no belief in God or religion. This man took advantage of the freedom of that period and propagated his atheistic beliefs everywhere. Not only that, but he sometimes went to the Holy Mosque (Masjidu 'l-Ḥarãm) in Mecca, or the Holy Mosque of the Prophet (Masjidu 'n-Nabi) in Medina, and there he debated the subjects of the Unity of God, life after death, and other cardinal principles of Islam. One of his objections against Islam was the very same one about inheritance. He would say :

(ما بالُ المَرأةُ المسكينـَةِ الضَّعيفةِ تأخُذ سَهْماً وَيأخُذ الرَّجُلُ سَهمَين)

"Why should a poor woman, who is weaker than man, gets only one share, while a man, who is stronger, gets two? This is contrary to justice." Imãm Ja'far as-Ṣãdiq (a.s.) replied that it was because Islam had exempted woman from armed combat, and moreover that dower and maintenance had been imposed upon man for her benefit. What is more, in certain cases of doubt, in which blood relatives had to pay ransom money, woman has been exempted from sharing with others in the payment. These are the causes why the share of woman is less

than the share of man. Imãm as-Ṣãdiq (a.s.) said distinctly that the special situation of woman in inheritance is the effect of dower and maintenance and exemption from armed combat and paying ransom money.

Such questions were put to all the Imãms of our faith, and all of them replied in the same way.

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PART TEN

RIGHT OF DIVORCE

* **The day-by-day increase in divorce, or the disease of the twentieth century.**
* **On the one hand, the modern world encourages social conditions which lead to divorce, while, on the other hand, it seeks to control it by force of law.**
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RIGHT OF DIVORCE (1)

In no age has the danger of the breaking-up of the family and the evil side-effects that arise from it been the object of so much attention as in ours, and in no age were human beings involved in this danger and in the evil consequences springing from it as they are in this age.

Law-makers, jurists, psychologists — all of them try, with all the means in their control, to further strengthen, stabilize and render indestructible the structure of marriage, but all efforts have failed and have instead aggravated the disease. Statistics show that year after year the number of divorces increases, and that there is imminent danger of the breaking-up of many other homes.

Usually, whenever some disease attracts attention, and material and intellectual efforts are expended to combat and defeat it, the number of cases decreases as a result and very often the disease is eradicated; but in the case of divorce it is just the opposite.

The increase of divorce in modern life :

In the past little thought was given to divorce, its evil effects, the causes of its occurrence and increase, and the ways of preventing its incidence, while at the same time there were fewer divorces, fewer broken homes. Certainly the difference between the past and the present is that now the causes of divorce are on the in-crease. Social life has assumed a form in which the causes of separation, disunion and the breaking of the ties of home life have been multiplied, and that is the reason why the efforts of the experts and the well-intentioned have not as yet been at all successful. Unfortunately, in the future it is likely to become more serious.

On February 13th 1967, *Newsweek* published an article under the title : “ The Divorced Woman — American Style” (later translated into Persian and printed in *Zan-e rũz* (no.105), there it was written: “Getting in and out of divorce is almost like getting in and out of taxis.”

It also writes that American people have an expression: “The worst reconciliation is preferable to the best divorce.” This expression was first coined by the Spanish writer Cervantes in 1600. Another saying, this time from 1960 and contrary to first one says: “Love is lovelier the second time around”, and comes from the pen of one Sammy Cahn, songwriter.

From the text of the article it appears that the second saying is now being realized in America, for it writes: “The allure of the marriage-go-round has grown so potent that it is attracting not only teen-agers and young married but more and more of their mothers. The U. S. divorce barometer is not on the rise; in fact, it has hovered around the 400,000-a-year level in World War II . . . Nearly 40 per cent of all ruptured marriages today have lasted ten years or more and 13 per cent have survived more than twenty years. The median age of the U. S.’s two million divorcees is now 45. Furthermore, belying the myth that progeny preserves marriages, some 60 per cent (vs. 42 per cent in 1948) of today’s

divorced women have children under 18 at the time of their breakup."

The article continues: "Yet for all her privilege and plenty the divorcee — mature or not — is hardly gay. Her *tristesse* is revealed in the incidence of divorced women seeking psychoanalysis, in their rate of alcoholism (one in four) and suicide (three times that of married women). . . In short, once outside the courtroom, many a newly divorced woman discovers that things are not what she deemed . . . The partnered world has yet to form a cohesive set of attitudes towards the female ex-partner. She may be respected, admired, even envied — but she does not fit snugly into other people's private lives."

The magazine then goes on to ask whether the cause of speedy divorces is disharmony and the absence of sexual compatibility between husband and wife. It writes: "To judge by court records, money, sex and incompatibility are still the prime reasons for divorce among all ages and classes. What underlies the failure of so many marriages is not a new form of friction — but a new unwillingness to tolerate the old frictions. In the age of the pill, the sexual revolution and the feminine mystique, the notion that happiness takes precedence over family solidarity has clearly captured the female imagination."

" 'A wife today,' says Unitarian minister Rudolph W. Nemser, of suburban Washington, D.C., 'is less willing to tolerate incompatibility without questioning her situation. The husband, by contrast, is more likely to accept the fact of a bad marriage and will persevere with it.' According to psychiatrist Wahl, women are becoming more demanding of sexual gratification and more intolerant of sexual incompatibility."

Divorce in Iran :

The rise in the divorce-rate is not confined to America. It is a universal disease of the times. Wherever western manners and

customs have influenced the lives of people more, the number of divorces has also gone up. If, for example, we consider the case of our own Iran, cases of divorce are found more in cities than in the country. In Tehran, where western manners and habits are more wide-spread, divorce cases occur in greater number than in other cities.

In issue no.11512 of the daily newspaper *Itilã'ãt,* a short statistical record of the marriages and divorces in Iran was made. It was mentioned that "more than a quarter of the number of divorces recorded are entirely connected with the area around Tehran, that is, twenty-seven per cent of the divorces recorded occurred in Tehran, in spite of the population of Tehran being ten per cent of the total population of the country. On the whole the percentage of divorces in Tehran is higher than the percentage of marriages. Marriages in Tehran account for fifteen per cent of all the marriages of the whole country."

The environment in divorce-infected America:

Let us leave aside now the fact that talk of an increase in divorce first arose in America, and as it was said in *Newsweek,* an American woman prefers her own enjoyment and pleasure to the well-being and safety of her own home, and let us proceed a step further and see why the American woman has become like this. Certainly it is not related to the nature of American woman; it must have some social cause. It is surely the social environment in America that has created this mentality among American women. Our worshippers of the west try to direct and push the women of Iran onto the tracks along which American women have passed. If their wish is fulfilled, there can be no doubt that the Iranian woman and Iranian family-life will meet the same fate as the American woman, and the Iranian home will become like the American home.

In issue no. 66 (4.5.1344 Sh.), the weekly *Bãmshãd* wrote: "See how far matters have gone! The voice of French people is

raised in protest. ‘The Americans Have Perpetrated Another Outrage.’ This heading is from an article in the French newspapers *France-Soir* which says that in more than two hundred restaurants and cabarets in the State of California female attendants work top-less. In that article it is written that a special skin-tight costume like a bathing-costume, which does not cover the breasts, has been officially recognized as a working dress in San Fransisco and Los Angeles. In New York city a considerable number of cinemas show only those films which are based upon sex, and the naked pictures of women at their doors confront the eyes. These films are called ‘Wife-Swapping’, ‘The Vice-Girls’, ‘Revealing Panties’, and so on. In the shop-fronts and book-stalls there may be very few books on the front of which there is no picture of a naked woman. Even the classics are not exempted from this rule. In the midst of these books one can find a large number of books with titles such as: “The Sexual Behaviour of American Husbands”, “The Sexual Behaviour of Western Men”, “The Sexual Behaviour of Youths under Twenty Years of Age”, “New Methods in Sexual Behaviour on the Basis of the Latest Surveys”.

“The writer of the article in *France-Soir,* surprised and thoughtful, asks himself at this stage: ‘To what extent does America want to go.’ “

At this point *Bãmshãd* writes: “The truth is that it will go anywhere it wants to . . . only my heart aches for these people of my country who think that they have found an ideal standard to follow, and are completely confused in this path.”

So it is clear that if an American woman has become playful and prefers her own pleasure to faithfulness to her husband and her home, she is not very much to blame. It is the social environment which has struck the destructive blow at the roots of the household.

It is strange that the leaders of our times are continuously giving encouragement to the social causes of divorce and the breaking up of the family. Amongst themselves, they try to excel each other

in their attempts in this direction, and then raise cries of woe and wonder why divorce is so frequent. With one hand, these people add to the causes of divorce, and with the other, they want to repress it by force of law. It is like asking for the impossible.

Assumptions :

Now let us begin discussing the subject at its roots. Firstly we should see whether, in principle, divorce is a good thing or a bad thing. Should recourse to divorce be entirely unrestricted?

If divorce is a good thing then every circumstance that increases the already increased occurrence of divorce is quite all right. Or maybe the way to divorce should be completely barred, and union by marriage should be forcibly kept intact for ever, and every circumstance and innovation which causes slackness in the sacred union of marriage should be strictly dealt with. Or there is the third course, the proper course to be adopted, which is as follows. The law should not entirely bar the way to divorce to man and woman, but rather it should leave the way open to it in those cases in which it is deemed necessary and unavoidable. When the law does not completely ban it, society should simultaneously take adequate steps to bring about such conditions that the causes of dissension between husband and wife should not occur. Society should take a firm stand against the causes which are the source of the disunion and separation of husband and wife, and the loneliness of children. If society itself furnishes the causes of divorce, no legal prohibitions can be fruitful.

If it is considered proper that the law should keep the door of divorce open, then under what conditions and in what way should it be left open? Should it remain open only for the husband, or only for the wife, or else for both of them. In the case of the latter alternative, should the door be kept open for both husband and wife in the same way? Should the law allow the husband and wife to step out of marriage both in the same manner, or is it preferable

that for each one, the husband and the wife, there should be different procedures for dissolving this tie.

In all there are five angles from which the problem of divorce can be discussed:

1. The unimportance of divorce, and the lifting of all moral and legal checks and hindrances for the control of divorce.

Those people support this view who consider marriage only as a source of sexual pleasure, and do not imagine it to have an aspect of inviolability, and do not consider the integrity of the family to be an asset for society. They think, in accordance with the saying 'the second love is more enjoyable', that the sooner that a new, different marriage is entered upon, the greater a source of sexual pleasure for woman and man it will be. In this point of view both the social value of the peace of the home has been ignored, and also the joy, purity, cordiality and happiness which is found in a continuous married life; and the occurrence and recognition of the unity of two spirits as if has been disregarded. This point of view is the most superficial and the most frivolous.

2. Marriage is a sacred pact. It is a union of hearts and souls, and must always remain intact and secure. The word "divorce" should be dropped from the vocabulary of human society. A wife and a husband who marry each other should know that nothing except death can separate them from each other.

This view is the one the Catholic Church has maintained for centuries and is not prepared to relinquish at any cost.

The supporters of this view are on the decrease in the world. Except in Catholic Italy and Spain, this law is not enacted these days. Time and again we read in newspapers how the wailings of Italian men and women are raised against this law; they attempt to get the law of divorce officially approved so that many unsuccessful marriages be prevented in their troubled country.

Some time back, in one of the current daily newspapers, the translation of an article from the *Daily Express* was published under the headline “Marriage in Italy — Slavery of women”, and I went through it. In this article it was said that at present in Italy because there is no divorce, many people enter into illicit sexual relations. According to the article: “at present more than five million Italians believe that their lives are nothing but sheer sin and illicit relationships”.

In the same newspaper it was quoted from the French *Le Figaro* that the non-availability of divorce is the cause of great distress among the Italian people. There are many persons who have given up Italian citizenship for this very reason. One Italian institute at last sought the opinion of Italian women as to whether the introduction of the provisions of divorce was against the principles of religion or not. Ninety-seven per cent of the women gave their replies in the negative.

The Church persists in its view, and argues all the more in support of the sanctity and inviolability of the marriage pact.

The sanctity of marriage, a necessity for its inviolability and indestructibility is. of course acceptable, provided that the relationship of the husband and the wife can be securely maintained in practice; but there arise occasions when compatibility between the husband and the wife is impossible. On such occasions it is not feasible to keep them tied up together by force of law and call it the union of husband and wife. The discarding of the opinion of the Church is certain. It is not unlikely that the Church may revise its belief, so it is not necessary to scrutinize and discuss further the viewpoint of the Church.

3. Marriage may be dissolved and terminated by the husband. As for wife, it is not dissoluble at her discretion at all.

Maybe in former days this view was entertained, but at present I do not think that any supporters will be found for this view.

At any rate, it too requires no further discussion and criticism.

4. Marriage is sacred, and the peace of the family to be respected, but recourse to divorce on special conditions for both husband and wife should be possible. Moreover, the way to step out of this blind alley should be the same for both.

Those who support the identicalness of the rights of man and woman in family affairs, and who misrepresent this as equality of rights, also support this view. In the opinion of this group all those conditions, requisites and limits that apply to the wife should also apply to the husband, and the very same way that the man has to get out of this blind alley should be the right of the woman as well. If there is any difference, there will be cruelty, discrimination and injustice.

5. Marriage is sacred, and the peace of the family to be respected, and divorce an unpalatable and detestable thing. Society is responsible for removing the causes and incentives to divorce, but at the same time the law should not bar the way of divorce for incompatible marriages. The way to get out of the bond of marriage should be kept open for the husband as well as for the wife. The door by which the husband is to come out of this situation is different from that which the wife is to use. One of the matters in which a man and a woman have different right is divorce.

This is the view which Islam has proposed, and Islamic countries, though half-heartedly, do act upon it.

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DIVORCE (2)

Divorce in our age is a great world problem. Everyone moans and complains. Those people under whose laws divorce is totally prohibited complain that they do not have the remedy of divorce for those unsuccessful marriages which are bound to take place. On the other hand, the cries those who have kept the way to divorce open equally for man and woman rise to the heavens complaining about the increase in divorces and the instability of the family structure with all its associated ills and uncalled for side-effects. Moreover, those who have given this right only to man complain on two accounts.

Firstly, about the unmanly divorces of certain men who, having lived together with their wives as husbands, suddenly develop a fancy for a new wife, and the first wife, who spent her vitality, youth, energy and health on their home and never imagined that her cosy abode would one day be seized from her, is driven away from her repose, forsaken and utterly dejected, by only one visit to the office of the registrar of divorces.

The other is the unmanly refusal of certain men to divorce their wives when there remains no hope of a harmonious and united life.

It can happen that due to some special reasons, the differences between a husband and wife reach a stage where there is no hope of their finding a settlement. All attempts at reconciliation prove fruitless; a great dislike exists between the husband and wife; they live separately, and each of them has practically nothing to do with the other. In such circumstances, any reasonable person would be convinced that the only thing proper for them is that the relation which has to all intents and purposes been cut should also legally be severed, and that each of them may be allowed to make the selection of some other partner. Nevertheless, some men, if only to torment

the other party and depriving her of the benefit of enjoying benefit of enjoying a married life, keep their unfortunate wife in a state of suspense for nothing (in the words of the Qur'ãn [*kal-mu 'allaqah*] (كالمُعَلّقة), like someome hanging on) .

As this kind of person knows nothing about Islam and Muslims except the name, and then they do these things in the name of Islam and by leaning on the laws of Islam, a doubt is created in some people who are not conversant with the depth and the real spirit of Islamic teachings as to whether Islam really advocates that the business of divorce should be like this.

With a voice of complaint, these people say: Has Islam really allowed men, sometimes by giving divorce and sometimes by withholding divorce, to persecute women in any way they like? Those people who act in the above mentioned way are completely satisfied that they are correct in the way they take advantage of their religious and legal rights. Those who raise objections say: Is that not cruelty? If this is not cruelty, what is cruelty? Do you not say that Islam is against injustice in any form and in any shape, and that Islamic laws are based upon justice and truth? If these acts are cruel and unjust, and Islamic laws are based up-on truth and justice, tell us, so that we may see what provision is made by Islam to check these cases of injustice.

There is no denying that these acts are cruel. We will point out afterwards that Islam has provided correctives for these practices and has not left them to themselves. Nevertheless, there is one other point which should not be lost sight of, and that is to think over what methods should be adopted to check these cruel-ties and injustices. Is the only thing which causes cruelties of this description to be committed the divorce law, and will only amendment of the divorce law amend these things? Or should the root cause of these cruelties be looked for elsewhere, because changes in the law alone cannot stop these things.

The difference between the view of Islam and some other views about solving social problems is that some people, holding views

views other than that of Islam, imagine that all problems can be solved by passing and altering laws. Islam, on the other hand, clearly makes the point that although the law can certainly be effective as far as the everyday affair of the people and matters revolving around contracts, etc. are concerned, in cases where the problem is characterised by feelings of affections and love and pertains to individual likes and dislikes, in short, in cases with an emotional aspect, then the law alone cannot be effective. Other causes and factors should be investigated, and other provisions brought into use to obtain the desired goals.

We shall prove that Islam has made use of the law in places where it can be effective, and has not been negligent in this direction.

Dishonourable divorces :

Firstly, we shall discuss the foremost problem of our times, namely dishonourable divorces.

Islam is strongly against divorce and wants divorce to be avoided as far as possible. Islam has provided this remedy only for occasions in which there is no alternative but separation. Islam considers as enemies of God those men who marry one woman after the other and divorce them in quick succession and whom it calls *mu'allaq* (lit: a divorcer).

In the book *al-Kãfi** it is narrated: The Prophet went to a man and enquired: "What did you do about your wife?" He said; " I divorced her."

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* *Kitãb al-Kãfi,* one of the most authoritative collections of *hadīth* in both *uṣũl* (principles of faith) as well as *figh* (jurisprudence) compiled by Abu Ja'far Muhammad ibn Ya'qub ibn Isḥãq al-Kulayni during the lifetime of the twelfth Imãm. This particular *hadīth* is in vol.6, p.54 of the Tehran edition.

The Prophet asked, “Did you see anything objectionable in her.”

He replied, “No, I did not see anything objectionable in her.”

The matter stopped here, and that man married again. The Prophet asked him, “Did you marry another wife?”

He said, “Yes.”

After some time the Prophet again went to that man and asked him: “What did you do about your wife?”

He said: “I divorced her.”

The Prophet asked him: “Did you see anything evil in her?” He said: “I did not see anything evil in her either.”

The matter closed again here, and that man married for the

third time.

The Prophet asked him: “Have you taken another wife?” He said : “Yes, O’ Messenger of Allãh ! “

A considerable time passed and the Holy Prophet went to him and asked: “What did you do about the wife you married?” He said: “I divorced her also.”

The Prophet asked: “Did you see anything evil in her?” He replied: “No, I did not see anything evil in her.” The Prophet said: “Allãh considers as His enemy and damns

the man who relishes changing wives one after the other, and the woman who delights in changing husbands one after the other.”

The Prophet was informed that Abu Abu Ayyub al-Ansari was deermined to divorce Umm Ayyub, his wife. The Prophet personally knew Umm Ayyub, and knew also that the divorce of Abu Ayyub was not grounded in any genuine cause. He said:

اِنَّ طلاقَ امّ اَيّوب لَحَوْبٌ

“Verily, the divorce of Umm Ayyub is a great sin.”

The Prophet also said: " Jibrã'il (Gabriel) so much commended the cause of the woman, and so counselled me as to give me the impression that, except in the clear case of adultery, the wife does not deserve to be divorced".

Imãm (Ja'far) as-Ṣãdiq quoted the Holy Prophet as saying: "To God no house is dearer than the house where there is the union of marriage, and no house exists which deserves His wrath more than that in which the union of marriage is broken by divorce." Imãm as-Ṣãdiq then said that the word *ṭalãq* (divorce) occurs repeatedly in the Qur'ãn, and that the details of the matter of divorce have been honoured with the attention of the Holy Qur'ãn. The reason for this is that God is an enemy of separation.

Tabarsi* in *Makarimu ' l- akhlaq* (Noble Deeds of Morality) quoted from the Prophet: "Get married, but do not divorce because the throne of Allãh shudders when there is divorce."

Imãm as-Ṣãdiq said: "No lawful thing is the object of so much wrath and hate in the eyes of Allãh as divorce is. Allãh considers the man who repeatedly divorces as His enemy."

This thing is not especially found in traditions from Shi'ite sources. The Sunnis have also quoted similar traditions. In the *Kitãb as-Sunan,* Abu Dãwũd quotes from the Holy Prophet that Allãh declared lawful nothing so abominable to Him as divorce.

Mawlavi (Jalãlu 'd-Dīn Rumī) in his well-known story of Mũsã (Moses) and the shepherd alluded to the same tradition of the Prophet when he said:

As far as possible do not step into separation,
For 'the most detestable thing to me is divorce'.

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* al-Ḥasan ibn al-Faḍl ibn al-Ḥasan ibn al-Faḍl at-Ṭabarsi (- 548/1154), expert in the science of *ḥadīth.*

In the biographies of the leaders and guides of our religion, it is observed that, as far as possible, they abstained from divorce. It was, therefore, very rare that they divorced a woman, and when-ever they did, there was a very reasonable and logical reason for that. For example, Imãm (Muhammad) al-Bãqir wedded a woman who was dearly loved by him. Then the Imãm became aware that the woman was *a nãṣibiyyah,* that is, she detested ‘Ali ibn Abī Ṭãlib and nourished a grudge against him in her heart. The Imãm divorced her.

The Imãm was asked, “The woman was loved by you, why did you divorce her?” The Imãm replied, “ I did not want that a flame from the fires of Hell should be by my side.”

A malicious tale without any truth:

Here it is necessary to refer briefly to a baseless and scandalous story which was fabricated by the criminal ‘Abbãsid Caliphs, and was spread about amongst people in general and mentioned in books, that Imãm al-Mujtaba,* the honoured son of Ali, Amīr al-mu’minīn, was one of those who wedded large number of women and then divorced them. Because the foundation of this malicious tale was laid almost a century after the death of the Imãm, it spread everywhere. The admirers and followers of the Imãm also began to talk about it without looking into the truth of the matter and without thinking over the fact that in the view of Islam this is an abominable and detestable thing and is befitting only for a sensuous and ignorant person. It is not the work of a person who used to go to *hajj* (pilgrimage to Mecca) on foot from Medina. During his lifetime, more than twenty times he divided up all his wealth and holdings among the needy and the poor; he took half of it and the other half he distributed among the destitute. How can this mischievous tale accord with the high standing position of utmost piety and

* Imãm Ḥasan, the second Imãm, brother of Imãm Ḥusayn.

infallibility and the Imãm-ate of that venerable personality?

As we know, with the change of the caliphate from the Umayyids to the Abbãsids, the Bani al-Ḥasan, that is, the grandsons of Imãm Ḥasan cooperated with the Bani al-‘Abbãs, while the grandsons of Imãm Ḥusayn, at the head of whom at that time was Imãm as-Ṣãdiq, abstained from cooperating with them. The Bani al-‘Abbãs, though in the beginning they showed esteem and respect for the Bani al-Ḥasan and gave them to understand that they thought them to be worthier of the caliphate than them-selves, ultimately betrayed them. Most of them were eliminated from the scene by being beheaded, and some were imprisoned.

The Bani al-‘Abbãs began to propagate lies against Bani al-Ḥasan for the purpose of firmly establishing their political position. One item of their mischievous propaganda was that Abu Talib, who was the great-grandfather of the Bani al-Ḥasan and the uncle of the Prophet, was not a Muslim and had died an infidel, while Abbãs, who was another uncle of the Prophet, em-braced Islam and died a Muslim. So the Bani al-‘Abbãs, who were the progeny of the Muslim uncle of the Prophet, deserved the caliphate more than Bani al-Ḥasan, who were the progeny of an infidel uncle of the Prophet. So as to make this view popularly acceptable, they spent large sums of money and invented false stories. Today, also, a section of the Sunnis, under the influence of the same propaganda and plan, declare Abu Ṭãlib to be an unbeliever. However, if research were carried out in real earnest among Sunni scholars on this subject, they would be able to correct this matter in line with history.

The other item of propaganda which they started against the Bani al-Ḥasan was that they said that the forefather of the Bani al-Ḥasan, Imãm Ḥasan, succeeded his father to the caliph-ate, but because he was a libertine, he occupied himself with wedding women and divorcing them. That is why he. could not succeed in the duties of the caliphate. He accepted sums of money from Mu‘ãwiyah, his

strong rival, abdicated the caliphate in favour of him, and applied himself to the sensuous activities of wedding and divorcing women.

Fortunately, in the end, eminent scholars of the subsequent period carried out research and arrived at the root of this falsehood. The above comment was first of all made by a judge who was in the service of Mansũur ad-Dawãnīqī, the ‘Abbãsid caliph, and it was commanded to publicise this falsehood. One of the historians remarked on this circumstance that if Imãm Ḥasan had wedded so many wives, where were all his children? Why was the number of his sons and daughters so small? The Imãm was not sterile, and birth-control and abortion were not the practice of the day.

I am amazed at the senseless credulity of the Shi‘ite narrators of traditions. On the one hand they narrate a large number of traditions from the Holy Prophet and the pious Imãms saying that God considers as His enemies men who divorce irresponsibly, and that He condemns them. On the other hand, they write that Imãm Ḥasan was a person who divorced an excessive number of women. These people never reflect that they should make a choice of one of three courses. Either they should say that there is nothing wrong with divorce, and God does not consider as His enemy a man who divorces women in great number, or they should say that Imãm Ḥasan was not a person who divorced many women. The third possibility is for them to declare, God forbid, that Imãm Ḥasan did not abide by Islamic law. However, on the one hand these venerable personages take the traditions of the detestableness of divorce as authentic and genuine, and on the other hand they believe in the exceeding holiness and piety of Imãm Ḥasan and display great esteem and respect for him. Along-side this they quote the excessive number of divorces of Imãm Ḥasan, and, without critically looking into the matter, pass on.

There are certain others who have gone so far in this matter as to say that Amīr al-mu’minīn, ‘Ali (a.s.) was displeased with this

behaviour of his son. He informed people publicly from the pulpit, and advised them not to marry their daughters to his son because he would divorce them. Despite this, the people answered that they would be proud of the honour of having their daughters married to the grandson of the Prophet. If he wanted them, he could keep them, and, if he did not want them, he could divorced them.

Perhaps some people consider the consent and agreement of the daughters and the members of their families sufficient to tone down and do away with the detestability of divorce. They think that divorce is to be hated only when the other side is not agreeable to it; but that when the woman desires to have the honour of living a few days with a man she is proud of, there is no harm in divorce.

But it is not like this. The consent of the fathers of the girls, and the consent of the girls themselves do not weaken the degree of the detestability of divorce. The reason is that Islam wants only that the ties of marriage should be steadfastly maintained. The agreement of the husband and the wife about separation does not, in this respect very much alter the situation.

Islam considers divorce detestable not to oblige or favour woman, and not to receive her gratitude and that of her family members. Her consent and the consent of the members of her family cannot do away with the detestability of divorce.

The reason I have brought up the subject of Imãm Ḥasan, besides the point that a false accusation about a historical figure should be refuted whenever possible, is that some persons who are not afraid of God may act in this manner, and then excuse themselves in the light of the example of Imãm Ḥasan.

Anyhow, what cannot be denied is that divorce and the separation of husband and wife is detestable and hated in the eyes of Islam.

Why did Islam not make divorce illegal ?

At this point a relevant question can be raised. If divorce is so detestable that someone who divorces a woman is considered to be an enemy of God, why did Islam not declare it unlawful? What hinders Islam from making divorce unlawful, and allowing it only on specifically determined occasions. In other words, would it not be preferable for Islam to prescribe conditions, and only allow a man to divorce a woman in those circumstances? And if divorce were conditional, a judicial aspect would necessarily have entered it. Whenever a man intended to divorce his wife, he would first of all have to submit evidence before the judiciary concerning the fulfilment of the required conditions. If the judiciary considered his proof reliable and his arguments reasonable, he would get permission for the divorce, otherwise not.

What after all is the underlying meaning of the words: 'the most detestable of lawful things is divorce?' If divorce is lawful, it is not detestable, and if it is detestable, it is not lawful. Being detestable and being lawful are contradictory.

Besides all this, the question is whether society, in other words, what is called the judiciary, which represents the society, has the right in divorce, which you say is detestable and hated, to interfere to such a degree that it can hold back a hasty divorce and delay it so much that the man may go back on his determination. At other times, society, that is, this same judiciary, may realize that the marriage in question is an incompatible one, and that it is preferable that the relationship be dissolved.

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DIVORCE (3)

The discussion has reached the point that in the eyes of Islam divorce is vehemently hated and detested. Islam inclines towards maintaining the contract of steadfast and firm marriage. At this point we took up for consideration the question as to why, when divorce is hated and detested to this extent, Islam did not declare it unlawful. Does Islam not prohibit every activity which is detestable like drinking, gambling and tyranny? Why did Islam not declare divorce altogether unlawful, and why has it not put a legal prohibition on it? what is the logic in saying that divorce is a lawful but detestable thing? If it is lawful, what does it mean to say that at the same time it is detested; and if it is detested, why should it be lawful? On the one hand Islam frowns at the man who divorces his wife, and feels disapproval and disgust to-wards him, but, on the other hand, when the man wants to divorce his wife, it puts no legal barrier up against him. Why should this be so ?

This is a very relevant question. All the mystery lies in this very point. The real secret, the crucial point, is that marriage and the life of a husband and wife is a spontaneous relationship and is not based upon contract; special laws have been stipulated in nature for it. The pact is intrinsically different from all other social agreements, such as sale agreements, leases, conciliations, mortgages, the power of attorney, and so forth, all of which are merely a series of social contractual agreements; one's nature and disposition have nothing to do with those things. Moreover, neither have any laws in the natural or innate sense been deter-mined for them; in contrast to the marriage agreement, in which the natural inclination of the two parties, which has, so to speak, a special mechanism, should be taken into account.

For this reason, if the marriage contract has provisions which other agreements and contracts do not have, it should not be an occasion for surprise.

Natural laws in the case of marriage and divorce :

In civil and social life, the natural law is the law of freedom and equality. All social arrangements should be based upon the two principles of freedom and equality and not anything else, unlike the pact of marriage, for which, in nature, principles other than freedom and equality have also been provided, and there is no alternative except to observe these laws. Divorce, like marriage, has a law in the framework of nature prior to any contractual, positive law. Just as in the start of the matter and in its intermediary period, that is, during married life, the laws of nature should be observed, so also in divorce which is its termination, these laws must be kept in view. (We mentioned these things in the sections on proposing, on dower and maintenance, and especially in the section on the differences between men and women). To leave the matter wholly to nature would serve no purpose, for, as Alexis Carrel has said, the biological laws pertaining to life are like the laws of the heavens: strict, cruel and unopposable.

Marriage is unity and coming together, and divorce is separation and breakage. When nature has so contrived the law of pairing and union of man and woman in such a way that from the one side there is effort to take possession, and from the other side there is giving way for the purposes of charm and attraction, the feelings of the one side are based on getting the person of the other and the feelings of the other side are based on capturing the heart of the other. When nature laid the foundations of marriage on love, unity and sympathy of feeling, and not on the basis of working together and comradeship, and when nature has arranged the design of the family on the centrality of the more delicate sex and the orbiting of the coarser sex, the separation, disunion and breaking up of this home and the wreck of this harmonious system should also follow a special arrangement.

In our fifteenth article, we quoted an eminent thinker as writing “Finding a mate means for men an attack for domination, and for women giving way for the purposes of charm and attrac-

tion. The actions of man, since he is by nature a hunting animal, are aggressive and positive, and woman is for him a prey which he must trap. Finding a partner is a battle and a combat and marriage is possession and authority."

The contract which is based on love and unity, and not on working together and comradeship, cannot be forced or coerced. It is possible to bind two individuals to work together by force of law, and they consider their contract to work together to be based upon justice, and so, worthy of being respected, and they will go on for a number of years working together. However, it is impossible to order two individuals to love each other and be sincere to each other, to command one to devote him or herself to the other, and to consider the happiness of the other, as his or her own happiness by force of law.

If we want such relations to exist between two individuals, we must make use of other practical and social contrivances apart from the imposition of legal obligations.

The natural mechanism of marriage, on which Islam has based its laws, is that the woman should have a position of being loved and respected in the family order. Consequently, if, for some reason, the wife has fallen from this position and the warmth of the love of the husband for her has cooled down and he has lost his affection for her, the foundation and the main pillar of the family has been destroyed. In other words a natural social unit has been destroyed by a rule of nature. Islam views this situation with regret, but once it is evident that the natural basis of that marriage has been destroyed, Islam cannot continue to imagine it to exist and be alive from a legal point of view. Islam tries, and takes specific steps to maintain the life of a family, that the woman should remain in the position of being loved and being sought after, and the man in the position of the seeker, the lover, ready to help.

Islam recommends that a woman should make herself attractive to her husband, that she should employ her skills in new ways for her husband, that she should satisfy her husband's libidinal needs and that she should not turn down his advances and thereby create complexes and neuroses in him. Correspondingly, Islam has recommended the man to be kind and affectionate towards his wife and to demonstrate his affection and love for her; he should not be reticent in his love for her. The plan of Islam in these recommendations is that the enjoyment of sex should be confined to milieu of the family. Large gatherings should be an environment for work and other activities, and not a focus of sexual pleasures. The recommendations of Islam are all grounded in this principle that contacts between men and women outside the frame of reference of the marriage must necessarily and definitely be morally impeccable and without lubricity. All these things have as their sole and unique aim that the family units of the society should be guarded and protected from being broken up and destroyed.

The natural status of man in family life :

In the eyes of Islam, the greatest insult for a woman is that her husband should say to her, "I don't love you. I hate you", but at that stage the law may seek to keep the woman forcibly and by compulsion in the house of that man. Law can by compulsion retain the woman in the house of that man, but it cannot possibly keep her in her natural position in the conjugal environment, that is, the position of being loved and centrality. The law has the power to safeguard the material interests of the wife like enforcing her right to maintenance, and so forth, but it has no power to force the husband to maintain his position as a devoted person lovingly revolving round his wife.

So whenever the fire of the love and affection of the husband is extinguished, the union of marriage, from the natural point of view, subsists no more.

We are confronted with another question here. If that fire of love is extinguished on the side of the woman, what is the situation? Does family life continue and flourish in spite of the fact that the wife's warmth of affection for her husband has cooled down, or does it not? If it does, what is the difference between a woman and a man, whereby man's indifference and apathy is the cause of the end of family life, while the woman's apathy is not the cause of its breaking up? If an end in the warmth of a wife's love brings family life to a stop, and if and when the woman declares her apathy towards her husband, should we consider the marriage to have ceased to exist and should we give the wife also the right to divorce?

The answer is that family life depends upon the affections of both sides, not of one. The only thing is that the psychology of women and men is different in this respect, and we have established this point on the authority of eminent thinkers in our previous articles. Nature has devised the ties of the husband and wife in such a form that the part of the woman is to respond to the love of the man. The affection and love of a woman which is genuine and stable can only be that love which is born as a reaction to the affection and admiration of man towards her. So the attachment of the woman to the man is the result of the attachment of the man to the woman and depends upon it. Nature has given the key to the love of both sides to the man, the husband. If he loves his wife and is faithful to her, the wife also loves him and remains faithful to him. It is an admitted fact that woman is naturally more faithful than man, and that a woman's unfaithfulness is a reaction to the unfaithfulness of the man.

Nature has deposited the key of the natural dissolution of marriage in the custody of man. In other words, it is man who by his own apathy and unfaithfulness towards his wife makes her cold and unfaithful. Conversely, if the indifference begins on the side of the wife, it does not affect the affection of the man, rather, incidentally, it makes the affection more acute. Consequently, the indifference of the man leads to indifference on both sides, but the indifference

of the woman does not lead to indifference on both sides. Coldness and the extinction of love in the husband is the death of marriage and the end of family life, but the wife's coldness and the extinction of her affection towards the husband drives her to the state of a half-dead patient with a hope of recovery. When the coldness begins on the side of the wife, if the husband is wise and faithful, he may regain the warmth of affection of the wife by expression of love and kindness. It is not an insult for man to keep his disillusioned beloved by force of law until she gradually regains her affection, but it is unbearable for a woman to have to seek the force and the constraint of the law to keep her supporter and his love.

This is of course in such situations where the cause of the apathy of the woman is not the immorality and cruelty of the husband. If the husband begins to tyrannise his wife and she, because of the oppression and cruelty of her husband becomes unaffectionate towards him, that is quite another thing. We shall discuss this matter separately, when, in connection with the second problem to be discussed, we shall put forth our point of view, that is, we shall discuss the unmanly way in which some husbands withhold divorce. Concerning this we shall say that this kind of men should not be allowed to take advantage of his wife, and keep her with him to be cruel to her and to tyrannise her.

Briefly, then, the difference between the man and the woman lies in the fact that the man need's the person of the woman, while the woman needs the heart of her husband. The affectionate support and kindness of the husband is so valuable for the wife that without this marriage becomes unbearable for her.

The view of a female psychologist :

In issue no.113 of *Zan-e rũz,* an article was published from a book called *The Psychology of Mothers* by a French woman, Beatrice Marbeau According to the article she is a psychiatrist. She is a psychologist and psychoanalyst attached to the Paris hospitals ,

and is herself a mother with three children.

In this article, a woman's need of the love and kindness of her husband when she is pregnant has been well explained. She says: "From the time that a woman has the feeling that she will shortly be a mother, she begins to watch, examine and smell the different parts of her body, especially when it is her first child. This state of inquisitiveness is very important. It is just like the state of a woman who is a stranger to herself and wishes to discover herself. When, for the first time, the woman feels the slight movements of her tiny child within her womb, she begins to listen to all the sounds of her body. The presence of another being within her body gives her such a feeling of well-being and pleasure that she gradually seeks to be apart and alone and cuts her connections with the outer world. The reason for this mental state is that she wishes to be alone with her embryonic child who has not yet come into this world . . .

"During the days of the pregnancy of their wives, husbands have a very important job on their hands, but they always, regret-fully, avoid carrying out these duties. The future mother wants to feel that her husband understands her, loves her and supports her. Otherwise, when she sees that her stomach has swollen and her beauty is impaired, and she feels sickness and is afraid of the delivery, she will put the blame on her husband for all those discomforts, for it was he who made her pregnant . . . It is the duty of the husband to stay by the side of his wife much more than before. The members of a family need to speak directly to a kind father of all their difficulties, sorrows and pleasures, even if their talk is senseless and boring. A pregnant woman very much needs to talk about her child. All the pride and honour of a woman is in her being a mother, and when she feels that her husband is in-different towards the child which she shall soon bring forth into the world, that feeling of pride and honour is changed into hate and futility. She begins to hate the thought of being a mother, and pregnancy begins to mean for her arriving at the point of death. It has been proved that mothers who have become disillusioned in this way bear the pains of birth with very great

difficulty . . . The relation of a child and its mother is not the relation of two individuals. As a matter of fact it is the relation of three persons, the mother, the baby and the father; and the father, even if he is absent (he- may have divorced his wife), has a basic role in the inner life of the woman, in her ideas and thoughts, and also in her feeling of being a mother. . ."

These are the ideas of an eminent woman thinker who is a psychologist as well as a mother.

The structure which is built on affections and feelings :

Now seriously consider whether a person who depends to this extent upon the sympathies, sincere affection, support and kindness of another person, and who is able to endure everything on the strength of that person's affectionate behaviour and kindness, so much so that even that person's own child has no proper significance without that other person's feelings of love and affection and not just his presence, whether that needing person can possibly be forced by law to he attached to the other being who is man,

Is it not a mistake that, on the one hand, we provide sources to encourage permissiveness and incentives for men to lose interest in their wives, and everyday provide more and more circumstances to excite sexual passions, and then, on the other hand, we want to bind wives to their husbands by force of law? Islam has provided the conditions for the husband to really want and love his wife, but Islam has never wanted to unite woman and man by force.

As a general rule, whenever there is a question of the interest of the heart, devotion, sincerity and the such like being the basic determining factor, the force of law has no place. It may be regrettable in some cases, but there is no point in compulsion, coercion and obligation.

For example, we know that in communal prayers (*ṣalãtu 'l-jamã'ah)* the righteousness of the Imãm and the confidence of those who follow him in prayers in his righteousness is a necessary condition. The relation of the Imãm and those who follow him in prayers is a relation which has for its base the righteousness of the Imãm and the confidence, devotion and sincerity of those who follow him. The heart and the feelings are the basic pillar of this relation. For this very reason this relation does not admit of any force or coercion. The law cannot guarantee the continuance and maintenance of this relation. If the followers in prayers sever their connections with the Imãm and their faith and devotion is disturbed, this connection automatically breaks up, irrespective of whether this lapse of faith and devotion is well-founded or not. Suppose the Imãm had the distinction of having the highest degree of righteousness, piety and competence, but he could not make people follow him in prayers. It would be ridiculous for the Imãm to approach the court of law and complain against the people about how they have no faith in him, and how they should not devoted to him, and finally how they do not follow him in prayers. Rather, it would be a most contemptible thing for the Imãm to compel people to follow him in prayers by force of law.

The same is the case of members of Parliament and their constituency. The nature of this relation is such that it should be based on a feeling of trust and faith. A feeling of devotion and goodwill is the vital pillar of this relation and cooperation. People must have faith, trust and confidence in the representative whom they elect. If people do not elect an individual, he cannot and should not force people to elect him, even if the people are mistaken in their assessment and the man is the most competent and deserving candidate, because the nature, of electioneering and voting is incompatible with compulsion, and such a man can-not, on the strength of his competence, approach a court of law with a complaint about how people, in spite of his being so-and-so, did not elect him.

What is required in circumstances like this is that the level of thought of the people should be raised. Their education should be carried out in the right way so that whenever they want they can perform their religious duties in a correct way. They should find out who really are the righteous persons, and then attach themselves to them and follow them. When they want to perform their duties in society they should be able to find out the competent persons, and, according to their inclinations and loyalties, cast their votes for them. If it happens, after some time, that people change their convictions and move towards some other person, and have even done this without any justification for their action, it is, no doubt, regrettable, but it is not an occasion for compulsion and the use of force.

Family duties are just like religious duties and social duties. The main point is that we should understand that Islam considers family life to be a natural social unit and that for this natural social unit a special mechanism is called for, and that it is necessary and unavoidable to keep that mechanism within view.

One of the miracles of Islam is that it has determined what this mechanism is. The Western world has ignored this aspect of human relations and that is why it cannot overcome the difficulties surrounding family affairs. Every day a new difficulty arises. However, fortunately, scientific research is gradually bringing it to light. I am quite sure and can confidently assert that by scientific enlightenment the western world will gradually accept Islamic principles in the regulation of their family life. Of course, I realize that my concept of the sound and enlightening teachings of Islam is not what most people understand it to be.

It is something more than equality which strengthens the foundation of the family :

What the Western world professes to be fond of is equality, but it does not know that Islam has already solved the question of equality fourteen centuries ago. In the affairs of the family, which

has its own order, there is something which is superior to equality. Nature has decreed equality only in civil social life, and that is all, but in the family unit it has designed other laws, too, besides that of equality. Equality alone is not sufficient to regulate family relations. In family relations, all the laws of nature should be kept in view.

Equality in corruption :

Unfortunately the word 'equality', has lost its true connotations and meaning due to much repeated and excessive use. A few think that the meaning of 'equality' is equality of rights, and they imagine that when they have applied the concept of equality to one situation their work is finished. These uninformed persons think that formerly men used to deceive women, but that now, since women also deceive men, everything is all right, be-cause equality in deception has been established. In the past, ten out of a hundred marriages were terminated by divorces and separations which were in the hands of men, but now, in some parts of the world, forty per cent of marriages are terminated by divorce, and in half this number the move is made by the wives. So they should rejoice and be happy that perfect equality has been established. Formerly it was only the men who were treacherous to women, and it was only men who were not God-fearing and pious. Today, fortunately, women also commit breaches of trust and are not pious and God-fearing. What can be better than that? Long live equality ! Down with inequality ! Formerly men were the symbol of cruelty and oppression. It was they who, despite having a few darling children, went after a new love, leaving behind the wife and children. And now wives, long- married, after living for years joined with their husbands in matrimony and with several children, abandon their hearth and home with complete cruelty and faithlessness, impressed by an introduction to another man at a party. They leave to satisfy their desires. What a good thing . What can be better than that? Men and women have come to stand on the same footing and equality has been established.

Instead of remedying the endless number of social ills, reforming the weakness of men and women, and strengthening the structure of the family home, we are further damaging it and making it more unstable, yet we rejoice and make merry and are perfectly satisfied that, anyhow, we are stepping forward in the direction of equality. Perhaps our only fear is that gradually women will gain victory over men in corruption, perversion, heartlessness and cruelty.

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It is thus clear why Islam, despite the fact that it considers divorce to be detestable and hated, does not legally ban it. By now the meaning of a legally permissible but detested thing should have become clear. The question as to how it is possible for a thing to be legally permissible but intensely detested and hated should now have been solved.

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DIVORCE (4)

From our previous discussions we hope it has become clear that Islam is opposed to divorce and the dissolution of the family home; it is her enemy and Islam has resorted to various kinds of moral and social precautions to safeguard the environment of the family against the danger of its breaking up. Islam has used every means and every weapon to avoid the occurrence of divorce except force and the weapons of the law.

Islam is against the use of force and the weapons of the law to restrain man from divorce and to keep the wife in the house of her husband. It is considered incompatible with the position and the status which a wife should maintain within the family. The reason for this is that the main pillar and the foundation of home life are the affections and the sentiments; and the person who should be the recipient, the central object and the beneficiary of the kindness and love, and who should in her own turn transmit this love and affection to her children is the wife. Apathy and coldness in the affections of a husband towards his wife makes the family environment dark and dismal. The sentiments and the attitude of the husband towards his wife have much bearing even upon the motherly feelings of the wife towards her children. According to Beatrice Marbeau, whose extract we quoted in the previous section, motherly feelings are not instinctive in the sense that in all circumstances it follows that a mother will always have the same warmth of feeling, not more and not less. The kindness and affection of her husband towards her have a great effect on her maternal feelings.

The result is that wife should receive kindness and affection from her husband so that she may be able to feed her children at the bountiful springs of her love and affection.

The husband is like the highlands, the wife is like a spring and the children are flowers and plants. The spring receives and stores the rain from the highlands so that it may give rise to clean and limpid

streams which will irrigate and cause flowers, plants and meadows to flourish. If rains do not fall on the highlands, or if they are of a kind that do not absorb anything, the springs will dry up, and the flowers and plants will fade and die.

So just as the main source of life for plains and fields are the rains, especially the rains of the highlands, the main source of family life is the kind and affectionate feelings of the husband towards his wife. It is from these sentiments that the wife's life as well as that of the children is serene, bright and flourishing.

How can it be possible to have recourse to the law as a weapon and scourge against the husband, when the sentiments and affections of the husband towards his wife have this vital position and produce this animating effect on the very spirit of the life of the family.

Islam is completely against unmanly divorce, by which we mean that a man after undertaking to live with a woman as a husband, and after living together with her for a period, takes a fancy to a new woman, or indulges in some other aspiration, and drives away his former wife. However, the remedy, according to Islam, is not to force the unmanly husband to keep his wife. This kind of keeping is intrinsically incompatible with the natural law of family life.

If the wife wants to return to the house of her husband by the power of the law and the administration, she can forcefully secure the occupation of that house, but she cannot regain the position of the woman of that family and be the intermediary in reviving the affections of her husband and transmitting them to the children. She is also unable in this way to satisfy her own inward urge to receive the devoted affections of her husband.

Islam has endeavoured to do away with unmanliness and with unmanly divorces, and has advised men they should be generous

towards their wives and behave towards them with affection and kindness. Nevertheless, in its capacity as law-giver, and bearing in view the position of the woman as the centre of the family system and as the intermediary in the receiving and transmitting of sentiments, Islam does not agree with forcibly and compulsorily retaining the woman in the home of an irresponsible person.

What Islam has done is exactly the opposite of what occidentals and worshippers of the west have done and are doing. Islam vehemently fights against the factors of unmanliness, faithlessness and promiscuity, but it is not willing to force a woman to stay with an unmanly and faithless person. Nevertheless, every day occidentals and those who worship the West add to the factors which cause waywardness, promiscuity, and sensual gratification in men, and then want the woman to remain with a promiscuous, faithless and irresponsible man.

We hope it will be acknowledged that, in spite of the fact that Islam has not forced wives to stay with undesirable persons and has set them at liberty, it has diverted all its endeavours towards enriching the human spirit and its decency. It has been able in fact to lower the number of unmanly divorces by its very noticeable sense of equilibrium, although others, who are unmindful of these matters, who resort to force and try to get everything they want at the point of the bayonet, have had very little success in this connection. With the exception of these cases of divorce which take place on the initiative of wives on the plea of incompatibility, and, in the words of Newsweek, because women are becoming more demanding of sexual gratification. . ., those cases of divorce which have taken place and are still taking place there through the capriciousness of husbands to gratify their sexual whims far exceed in number the cases which take place in our midst.

The nature of peace in the family is different from all other forms of peace :

Peace and amity should definitely exist between wife and husband. Nevertheless, the peace and amity which should pervade family life are very different from the peace and amity that should obtain between two colleagues, two partners, two neighbours or two adjacent countries which have common frontiers.

The peace and amity in the life of the married couple is similar to the peace and amity that should subsist between parents and their sons and daughters; which means generous treatment, self-denial, concern with each other's future, breaking down the barrier of duality, considering the happiness of the other to be his or her own happiness and the misfortune of the other to be his or her own misfortune. This is different from the peace and amity that holds between colleagues, or partners, or neighbours, or two countries.

The peace which we mean by the peace between colleagues and so on, signifies non-intervention in, and non-encroachment on, the rights of each other. Between two enemy countries even 'suspension of armed hostilities' is sufficient. If some third power interferes and occupies the border-land between the two countries and hinders the armed confrontation between the two countries, peace subsists, because a political peace has no other meaning than non-intervention and non-interference.

However, the peace of the family is different from political peace. In the peace of the family, non-encroachment on the rights of one by the other is not sufficient. An armed peace is of no avail. Something both more advanced and more basic is needed. Unity, oneness and the union of spirits into a single whole should be established as in the case of the peace and amity between fathers and sons, and something more exalted than non-intervention is necessary. Unfortunately, because of certain historical reasons and possibly because of its geographical position,

the west is stranger to sentiments (even within the environment of the family). In the thinking of a westerner, the peace of the family has little difference from a political or social peace. According to the same pattern as the accumulation of strength on the border of two countries, he makes peace. He wants to make peace while focusing his strength on the frontier of the lives of the wife and the husband, and he is oblivious to the fact that the foundation of family life rests upon the dissolution of these frontiers, upon oneness and upon considering every other power as foreign.

Instead of diverting the attention of occidentals towards their mistaken conception of family life and their pride in their own impressive individuality, the worshippers of the west are so far lost in imbibing occidental ways of life that they are utterly confused and have even forgotten themselves. But this state of being lost to themselves cannot last for ever. The time when the east will discover her own personality, rend asunder this halter of worshipping the west, and rely on its own ways of thought and its own philosophy, is not far off.

At this stage, it is necessary to mention two points.

1. Islam welcomes any factor that will do away with divorce :

Some persons may possibly have got the impression from what we said so far, that we believe that there should be no obstacle for a man to divorce, and that as soon as a man makes up his mind to divorce, the way to it should be cleared for him in every respect and from all directions. No, we never meant such a thing. What we said concerning the Islamic view was only that there should be no recourse to compulsion and legal force as a deterrent to prevent a man from divorce. Islam welcomes everything which could be instrumental in dissuading a man from divorce, and has purposely laid down conditions and has ordained hard and fast rules which naturally have the effect of delaying, and may, in all probability, result in dispensing with, the divorce.

Besides advising the administrators of the marriage oath *(ṣīghah),* the witnesses and others to make efforts to dissuade the man from divorce, Islam has ordained that the divorce should not be considered lawful and rightly administered except in the presence of two righteous witnesses. This condition is for the good reason that when a divorce is to be administered in their presence, because of their righteousness and piety, they will try their best and make an extreme effort to bring about a reconciliation between the wife and the husband.

Despite this, the present practice is that the person carrying out the divorce pronounces the divorce before two righteous witnesses who have never seen the husband and the wife before and do not recognize them. Only the names of the wife and the husband are mentioned before them. However this is all a meaningless routine and it has nothing to do with the viewpoint and the purpose of Islam. In our midst the practice is that those carrying out the divorce gather two righteous persons and pronounce the names of the wife and the husband before them, for example, they say: "The husband is Ahmad and the wife is Fãṭimah; I, as a representative of the husband, divorce the wife." However, who are that Ahmad and Fãṭimah? And have the righteous witnesses, who listen to the pronouncement of words of divorce, ever seen them? If there arises an occasion some day when evidence is required, could they bear witness that the divorce of these two particular persons was administered in their presence? Of course not. I am quite sure.

In any case, one of the things which tends to dissuade men from divorce is the presence of these two virtuous persons, provided that the right method is adopted. Islam has not laid down the presence of two righteous persons as a necessary condition for marriage, which is the beginning of the contract because, it did not not want to cause practical delay in a virtuous deed. But for divorce, in spite of its being the end of the contract, the presence of two righteous persons is laid down as a necessary condition.

Likewise, Islam has not laid down that the woman's monthly period of menstruation should be an obstacle in the performance of the marriage agreement, while it has laid down this thing as an obstacle to obtaining a divorce, even though, as we know, menstruation (as far as the Divine law is concerned) prevents the husband and wife having sexual intercourse and thus has a relation to marriage but not to divorce which is the occasion of a final separation, from which time on the man and the woman will have nothing to do with each other. Normally speaking, Islam should have prohibited the marriage agreement taking place during the period of menstruation, so as to avoid the danger of an infringement of the necessary staying apart of a man and woman who are with each other for the first time. Divorce, on the other hand, results in separation, and menstruation is of no consequence in this connection. Islam, for all its being in favour of 'union' as against 'separation', laid down the monthly period as an obstacle to the lawfulness of divorce, while Islam did not deem it necessary that this period should stand in the way of the lawfulness of the marriage contract. In some cases a period of three months during which no intercourse took place is required before it is permissible to divorce.

It is evident that all these obstacles and hindrances are meant to ensure that during this period the violence of passions and the displeasure which may have contributed to the decision to divorce should subside, that the man and the woman may have time to make amends, and thus the divorce may be dispensed with.

Besides that, when the cause of the divorce is the displeasure of the husband and the divorce takes place in the form of a revocable divorce, the man is allowed a period of grace called ***'iddah,*** during which he can revoke the divorce and return to his wife.

Since Islam has laid down that the expenses of the marriage, the expenses of the period of *'iddah,* and the expenses of the maintenance of the children should be the responsibility of the man, it has thereby devised a practical obstacle to a man's going

to that length. A man who wants to divorce his wife and marry some other woman must pay for the maintenance of his former wife during the period of *'iddah***,** he must be responsible for the expenses of the children that he may have had by the wife he is divorcing, he must provide a dower for the new wife, and he must once more bear the burden of the living expenses of the new wife and the children that are born to her.

These things, in addition to the responsibility of the supervision of the motherless children, present an awful prospect for the man who would divorce. All these things are in themselves a check on his determination to divorce.

Over and above all these things, where there is a fear of the dissolution and the break up of the family peace, Islam has required that a family "tribunal" be formed and set in motion. It should be arranged in this manner, that one individual arbiter representing the husband and another representing the wife be chosen to investigate and reconciliate.

The arbiters have to try their best to remove the hurdles and differences, and if then, after direct consultation with the wife and the husband, they discern that separation between them is the only remedy, they can carry out a separation between them. In the event that persons having the ability to arbitrate can be found in the families of the wife and the husband, they are to be preferred to the others; this is the actual saying of the Qur'ãn. In verse 35 of the chapter *an-Nisã'* (The Women), the commandment comes in the following words:

وَإِنْ خِفْتُمْ شِقَاقَ بَيْنِهِمَا فَابْعَثُوا حَكَمًا مِنْ أَهْلِهِ وَحَكَمًا مِنْ أَهْلِهَا
إِنْ يُرِيدَا إِصْلَاحًا يُوَفِّقِ اللَّهُ بَيْنَهُمَا إِنَّ اللَّهَ كَانَ عَلِيمًا خَبِيرًا ·

And if you fear a breach between the two, bring forth an arbiter from his people and from her people an arbiter, if they desire to set things right; Allãh will compose their differences; surely Allãh is All-knowing, All-aware.

The writer of the commentary *al-Kashshãf,* commenting upon the word (حَكَم) 'arbiter' writes : "the person who is selected, should be trustworthy, influential and impressive in his talk, acceptable, and capable of proper peace-making arbitration". He afterwards says that the reason the arbiters should be selected in preference from among the members of the families of the husband and the wife is that closely related persons better know the actual position that exists between them. Besides that, since they are relatives, they are more interested in their reconciliation than strangers. Moreover, the wife and the husband will disclose their inner secrets better to relatives than to strangers. They will speak out secrets before their own kith and kin which they would not be prepared to speak out in front of strangers.

There is a difference of opinion amongst religious scholars as to whether the setting up of the arbitration tribunal is obligatory or merely recommended. Some eminent researchers believe that this is a duty of the government of the day, and is obligatory. Shahīd ath-Thãni, in *al-Masãlik,** explicitly pronounced his legal decision that the matter of arbitration, in the manner we have mentioned, is obligatory and necessary, and that it is the duty of the ruler always to see that it happens.

Sayyid Muhammad Rashīd Riḍã,** the writer of the Qur'-anic commentary *al-Manãr,* after putting forth his view that the convening of the arbitrating body is obligatory, refers to the con-

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* See note p.62

** Muhammad Rashīd Riḍã (1865 — 1935), Muslim scholar who spear-headed an intellectual response to the encroachment of western values in Muslim countries. He published the newspaper *al-Manãr,* which published his *Tafsīr al-Manãr* in instalments, and which promulgated the views of the new Islamic reformist perspective of himself and his intellectual predecessors Muhammad 'Abduh and Jamãlud-Din al-Afghãni. His commentary was published in twelve volumes (incomplete, up to *Sũrah* Yũsuf) in Cairo. (*tr.*)

troversy of religious scholars concerning whether it is obligatory or recommended, says: "If there is one thing that does not exist among the Muslims it is the taking of action according to this commandment and benefiting from its infinite advantages. Divorces take place every day. Discords and disputes make their way into homes, but not the slightest use is made of the principle of arbitration which is commanded by the actual text of the Holy Book. All the energy of religious scholars is being spent in debates and disputes as to whether it is obligatory or recommended. None came forward to ask why, if it is obligatory or recommended, whichever it may be, no practical steps are taken to comply with this clear commandment? Why should all your energies be spent in debates and quarrels? If it has been decided that no action is in actual fact to be taken, and that people are not to benefit from its advantages, what is the difference in its being obligatory or recommended?"

Shahīd ath-Thãni* says concerning the powers and the authority which the two arbiters have that they may, for example, oblige the husband that he should put up the wife in such and such house, or that he should not keep his mother or his other wife in that house, not even in a separate room, or, for example, that he should pay any dower money to his wife which he had promised to pay in cash, or in case he had borrowed money from her, that he should pay it back.

The purpose is that every strategy which can bring about a reconciliation, or at least delay the divorce, is right and desirable in view of Islam.

Here it is necessary to answer the question which can be put in this form: Has society, that is, the body, whether it be called a department or whatever, which is the representative of society, the right to interfere in the matter of divorce, which, in the view of

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* See note p.62

Islam, is detestable and disliked, with a view to pre-venting or delaying the decision of the husband to divorce?

The reply is that of course it can do such a thing. The reason is that all decisions which are taken to divorce are not indications of a real death of the union of marriage. In other words, all decisions which are taken to divorce the wife are not due to the complete extinction of the fire of love of the man, or the falling of woman from her natural position, or, finally, the inability of the husband to maintain the wife. Most decisions are taken under the influence of emotion and rashness, and in error. By all means, society may take steps to any extent to see that decisions arising from hastiness and rashness should not come to fruition. This is a proper step and is a thing which Islam would welcome.

The departments who represent society should prevent the persons in charge of the divorce court from carrying out a divorce until the department has informed them of its failure in its attempts to bring about a reconciliation between the husband and the wife. The department should try to make the husband and wife return to amity and goodwill, and only if it has evidence that there is no possibility of reconciliation and adjustment between the husband and wife, should it issue a certificate of the non-feasibility of reconciliation and inform the divorce court accordingly.

2. The wife's past services to the household:

The other point is that in unmanly divorces, over and above the dissolution of the sacred peace of the family, there arise special difficulties for the wife which should not be overlooked. The wife conducts herself sincerely while she lives for years in the house of her husband. As she has no idea of any duality between herself and her husband, and considers the house to be her own house and her own refuge, she does her best and strains every nerve to furnish, equip and improve the facilities of the home. Most women (with the exception of the modern town woman) work hard, and take

pains to economise in food, dress and the other expenses of the house to such an extent that their husbands disagree with them. They very often refuse to employ a home-help for economic reasons; they sacrifice their energy, their youth and their health for the home, their abode, their refuge, and, in reality, they do all this for the sake of the husband. Now, suppose that the husband of a wife like this, after years of life as a partner, takes a fancy to a new wife, and divorces the previous wife, and wishes to bring the new wife into the refuge and home of the first wife, which was created at the price of her life-blood, her youth, her health and her frustrated aspirations. He wants to live in luxury with the second wife on the product of the labours of the first wife. What is the proper course to pursue in cases like this?

In such situations, as mentioned above, the matter to be looked into is not only the question of the upsetting of the peace and tranquillity of family, and the breaking up of the tie of conjugality. It is not the place here to say that the disgraceful behaviour of the husband is the cause of the death of the union of marriage, and that forcing a woman to remain with an irresponsible man is below the natural dignity of the wife.

Here, there is another problem to be tackled. Here the matter of evacuation and of being homeless and of handing over one's own place of refuge to an intruding rival comes in. The thing to be considered here is a situation in which taking pains, toiling, enduring hardships and being of service come to nothing.

Forget about the husband, the peace of the family, and the cooling down in family affections. Every human being needs a shelter, a place of refuge, and then with the shelter and the home, which one builds up with one's own hands for one's own use, one has affection and attachment. If you turn out a bird from its living-place, the nest that it has built for itself, it will naturally de-fend itself. Has the wife no right to defend her refuge and home? Is such a thing not severe cruelty on the part of the husband?

What remedy has Islam provided for this aspect of the situation?

Our view is that this complicated matter requires full attention and careful thinking out. Most of the difficulties that result from unmanly divorces are of this nature. It is in cases like this that divorce is not only the dissolution of conjugality, but is rather the break down and complete annihilation of the woman.

Nevertheless, as it was suggested in the posing of the problem itself, the matter of housing and shelter is distinct from the matter of divorce. These two difficult matters should be differentiated and considered separately from each other. According to the Islamic view and its laws, this difficulty has already been solved. It is due to an ignorance of Islamic laws, and the taking of advantage of the good intentions and faithfulness of wives by husbands, that this difficulty presents itself.

The source of this difficulty is that most husbands and wives imagine that the work and the services that a wife renders in the house of her husband and the gains that accrue from them, belong to the man. They believe that a husband has a right to give orders to her as if to a slave or a labourer, and that it is obligatory on her to carry out his orders in all and sundry matters. As we have repeatedly said, a wife has complete independence in connection with household work and activities, and any work that she does is for the benefit of herself. The husband has no right to pose as an employer. With the full economic independence that it has granted to woman, and, besides that, with the laying down of the responsibility of her expenses and the expenses of her children on the husband, Islam has given her enough leisure and the complete opportunity to make herself economically independent of man and to obtain the means of a respectable living. This she should do to such an extent that, in this regard, the divorce and the separation cannot create any problem for her existence. All those things which a woman may contribute to the house and her home should be considered by her to be her own property, and the husband should have no right to take those things from her.

This kind of anxiety exists in the system of the family, because the husband considers his wife to be obliged to work in the house, and also imagines that the results of his wife's work belong to himself and not to his wife. The anxieties which exist amongst our men too are also due to ignorance and being unaware and unmindful of Islamic law.

The other cause of these discomforts is that husbands take undue advantage of the faithfulness of wives. Some women, not because of ignorance of Islamic law, but rather because they place their confidence in their husbands, make sacrifices in their homes. They wish there to be no question of 'mine' or 'yours' in between them and their husbands. On these grounds, they take no notice of their rights and do not care to take advantage of the opportunity which Islam has granted to them. Sometimes it so happens that they are disillusioned, and they come to know one day that they sacrificed their life for a faithless being, and that they missed the chance to avail themselves of the right which Islam has guaranteed them.

Such women should take care from the beginning :

*How fortunate it is that affection arises on both sides.**

If a woman rises above making use of her legal right to save and keep money and wealth in her own custody, to make arrangement for a residence in her own name, and instead makes a gift of the energy of her work to her husband, the husband also, according to : (وَإِذَا حُيِّيتُم بِتَحِيَّةٍ فَحَيُّوا بِأَحسَنَ مِنْهآ أَوْ رُدُّوهَا) *And when you are greeted with a greeting, greet with a fairer than it or return it;* (Qur'ãn, 4:86) should make a present of a reciprocal amount or more to the wife as a gift. Amongst thoughtful and considerate men, it has always been a practice, and still is, that in return for the sacrifices and sincere services of their wives, they

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* Quotation from the quatrains of the famous Iranian poet Baba Ṭãhir Hamadãni.

give something of value, a house, or some other landed property, as a gift to their wives.

However, what we want to say that the difficulty of the wife being shelterless has no connection with the law of divorce. Any amendment in the law of divorce will not reform or improve things in this connection. This difficulty is related to the question of the economic independence and non-independence of the wife, and Islam has completely solved it. This difficulty in our society arises from the unawareness of a number of women of Islamic teachings, and the negligence and naivety of the others. If women are aware, take notice, and make use of the opportunity that is granted to them in this connection, and are not so simple as to sacrifice and waive their rights in favour of their husbands, this difficulty is solved by itself.

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DIVORCE (5)

Our worthy reader may remember that in the second part of this section on divorce, we said that our worries about divorce came from two directions. One concerned the unmanly divorces arising from the faithlessness and callousness of a section of men. The other is the unmanly refraining from divorcing a wife by those men with whom there is no hope reconciliation. They restrain themselves from divorcing only so as to persecute the woman, and not so as to take advantage of such time to reach a compromise.

In the two previous chapters we have discussed the first category. We said that Islam welcomes all means that may serve as an obstacle to unmanly divorce, and it has itself endeavoured by special contrivances to see that divorces of this description do not take place. Islam is only against the use of force for the continuation of the union of marriage.

From what has been said it is evident that a family is a living unit, and that Islam endeavours that this living unit should continue to live. Nevertheless, when the living entity expires, Islam regards it with regret and issues the permission to bury it; but Islam is not ready to mummify its dead body with the balm of law, and does not approve of the idea that with this mummified body there should be a display of feigned liveliness.

The reason is now intelligible why a husband has the right of divorce. The association of married life rests upon the pillar of spontaneous attachment and has a unique mechanism. Creation has given the key to strengthening it, and also the key to bringing it down and shattering it, into the hand of man. Under the command of creation, every woman and man has a certain disposition and certain characteristics, when compared with each other, which cannot be exchanged and are not the same. This disposition and these distinctive characteristics are by themselves the root-cause of many things and one of these things is the right of divorce.

In other words the source of this situation is the particular and distinctive role of both man and woman in love and in their search for a mate, and nothing else.

The right of divorce arises from the particular role of the man in the matter of love, and is not based upon his ownership :

From here you can have some idea of the worth of the propaganda of elements that are against Islam. These elements sometimes say that the cause of the giving of the right of divorce to men in Islam is that it does not acknowledge women as having the capacity to will, to desire or to want. It considers them in the category of material things and not persons. Islam considers man to be the owner of woman, and naturally, according to the law "***an-nãs Mũṣãllaṭuna 'alã amwãlahum***" (people have mastery over their property) it gives him the right to discard his property at any time he may wish to.

It is clear that the logic of Islam is not based upon man's ownership and woman's status of being owned. This much is evident, that the rationale of Islam is too deep and too far above the level of comprehension of these writers. Under the guiding light of revelation, Islam has realized the secrets of the foundation and structure of the family and family-life to which learning and science, after a lapse of fourteen centuries, is trying to approach.

Divorce is a release in the same way as the inherent nature of marriage is dominance :

Sometimes these people ask: "Why does divorce take the form of a release, an emancipation? Surely it should have a judicial form." To these people it should be said: "Divorce is a release in the same way that marriage is a state of dominance. If you can possibly do so, change the natural law of seeking a mate in its absoluteness with regard to the male and the female, remove the natural state of marriage from the condition of dominance; if you can, make the

role of the male and female sex in all human beings and animals identical in their relations, and change the law of nature. Then you will be able to rid divorce of its aspect of release and emancipation."

One of these people writes, "Generally, the Shi'ite jurisconsults count the contract of marriage as an irrevocable contract, but I wish to say that the contract of marriage, according to Islamic jurisprudence and the Civil Law of Iran is irrevocable only in relation to woman. As far as man is concerned it is revocable contract, for he can any time make the above contract ineffective and break the marriage pact."

Afterwards he writes, "The contract of marriage is revocable as far as man is concerned, but as far as woman is concerned it is irrevocable. This is an injustice of the law that has made woman a captive of man. Whenever I read the wordings of sec. 1133 of the Civil Law of the Royal Land of Iran (law of the right of man to divorce), I feel ashamed in front of Iranian women, in front of these schools and colleges and this age of atoms, satellites and democracy."

This gentleman, first of all, could not understand a very simple thing. That is that divorce is different from the dissolution of marriage. When it is said that the contract of marriage in its essence is irrevocable, that means neither the husband and wife (with the exception of special cases) has the right to dissolve it. If a marriage is dissolved, all its consequences are nullified and it becomes a nullity. When in special circumstances a marriage is dissolved, all its consequences, including dower are eliminated. The woman then has no right to demand it. Likewise, there is no question of maintenance for the period of *'iddah.* In contrast to this is the case of divorce, in which the relation of conjugality is broken up, but the consequences of the marriage contract are not absolutely eliminated. If a man marries a woman and agrees to a dower of five hundred thousand tumans, and after one day's married life wants to divorce that wife, he must pay the whole

amount of the dower and, over and above that, maintenance for the period of *‘iddah.* If a man, after the marriage contract, but before the consummation of marriage, divorces his wife, he must pay half the amount of the dower, and, because a woman thus divorced is not bound by *‘iddah,* maintenance for that period is out of question. So it is clear that divorce is not able to nullify all the consequences of the marriage contract; but in the case where the marriage is dissolved, the woman has no right to claim the dower. It is thus evident that divorce is different from dissolution. The right of divorce being with the husband does not make marriage incapable of being an irrevocable contract. Islam has acknowledged two things: dissolution and divorce. The right of dissolution obtains in such cases where there may be some defect in the man or in the woman. This right is given to the man and also to the woman as opposed to the right of divorce. The occasion for divorce is on the death of family life, and this right exclusively belongs to the husband.

The fact that Islam has made a distinction between the category of dissolution and the category of divorce and has laid down different regulations for each of them, shows that the fact that the power of divorce has been given to man does not arise from the intention of Islam to favour man with a privilege.

To the above-mentioned gentleman it should be said that, so that they need not feel ashamed in front of the schools, colleges and satallites, it would be a good idea for them to take the trouble of receiving a little education and learning something for once. They may then be able to differentiate between dissolution and divorce, and they may also become acquainted with the deep and subtle philosophy of Islam concerning society and family life. In this way, they would not feel ashamed in front of schools and colleges, but rather they would be able to pass them by holding up their heads. However, we are sorry to say that ignorance is a totally incurable disease.

Penalty for divorce :

In some of the world's legal systems they used to impose a penalty for the prevention of divorce. I do not know whether there exists any such law as this in the world at present or not. Nevertheless, records show that in the Holy Roman Empire penalties were imposed on husbands who divorced their wives for no good reason.

Obviously this is another manner of resorting to force but it is not effective.

Wife having the right of divorce as an entrusted right :

At this juncture it is necessary to mention one thing. Upto this time all our discussion has been about the fact that divorce is a natural right peculiar to man. Nevertheless, a man can give his wife the right of divorce as an absolute attorney, or in special circumstances, on his own behalf. This is something else which, according to Islamic jurisprudence, is acceptable, and the Civil Law of Iran has also explicitly mentioned it. By the way, so that the man may not waive his appointing of an attorney, and so that he may not deny the ceding to the woman of this right, that is, so as to give it the form of an irrevocable attorney-ship, an attorneyship of this description is usually concluded by the contrivance of making it a binding condition in the marriage contract. According to this condition, the woman may unconditionally, or in special circumstances that have been specified beforehand, divorce. In this way, from the olden times, those women who had a cause to be anxious about some aspects of their future husbands, kept the right of divorce secure in their hands in the form of a binding condition contained in the marriage contract, and made use of it when absolutely necessary.

Thus, in the view of Islamic law, a woman has no inherent natural right of divorce, but as a stipulatory right, namely in the form of a condition contained in the marriage contract, she may have that right.

Clause 1119 of the Civil Law lays down: “The parties to the marriage contract may put forth any condition that is not inconsistent with the named contract, in connection with the marriage contract or some other binding contract. For example, there may be the condition: whereas the husband marries another wife, or disappears for a certain period, or ceases to maintain his wife, or has evil intentions against the life of his wife, or develops a bad character so that their life together becomes unbearable, the woman is an attorney and can appoint an attorney so that after the establishing of the condition in the law-court and before the legislature, she may consider herself divorced.”

As you see, the thing which is all the time repeated, that, in the view of Islamic law and the Civil Law of Iran, divorce is a one-sided right and is absolutely denied the woman, is just not true.

In the view of Islamic law, and also according to the Civil Law of Iran, the right of divorce as a natural right is not meant for the woman, but as a stipulated and conferred right it can exist, and can be made use of by her.

Now we have arrived at the stage where we can take up the second part of our subject, namely the cruel and unmanly refusal of certain men to divorce. We have to see whether Islam has provided some way for the solution of this difficulty which is really a very problematic situation. We shall discuss this subject under the heading of ‘Judicial Divorce’. Meanwhile, we mention our regret that our discussion of the first part has become so long.

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By judicial divorce we mean a divorce which is obtained through a judge and not through the husband.

In many of the world's systems of law, the authority of divorce is altogether in the hands of the judges. The judiciary is the only forum which can adjudge the plea of divorce and the dissolution of marriage. Under those laws all divorces are judicial divorces. In our previous sections, by taking note of the spirit of the union of marriage and the purpose in setting up a peaceful family environment, and also by keeping in view the position and status that a wife should have in the family milieu, we clarified the invalidity of this approach. We have submitted our reasons, and have shown that divorces which culminate through the natural course of events and as a result of these events cannot depend up-on the decision of a judge.

The question at present is whether, in the view of Islam, a judge (*qãḍī*) — with all the strict and stringent necessary attributes that Islam has prescribed for him — has no right to give a divorce in any case, situation or circumstances. Or whether under certain special conditions that right does devolve on him, however exceptional or rare those cases might be.

Divorce is a natural right of man, provided that he behaves in a normal manner towards his wife. The normal behaviour of a husband towards a wife is that, if he likes to live with his wife, he should look after her properly, respect her rights and behave with love towards her. In case there is no way in which he can continue to live with her, he should courteously and kindly divorce her, i.e., he should not abstain from divorcing her. He should pay what is due to her, and something over and above that as an expression of gratitude:

(وَمَتِّعُوهُنَّ عَلَى المُوسِعِ قَدَرُهُ وَعَلى المُقتِرِ قَدَرُهُ)

Yet make provision for them, the affluent man according to his means, and according to his means the needy man (2:236), and inform her about the termination of their relationship as husband and wife.

However, if the husband does not act according to the normal code of behaviour, what should be done? We mean to say that if we come across a man who does not wish to live with his wife, who neither behaves in a congenial manner, nor provides a happy and Islamic environment for the family, nor even sets the wife free to her own fate, who in other words, neither cares to perform the responsibilities of married life, nor cares to take measures to create a suitable situation for his wife, nor even consents to divorce his wife, in such circumstances what is to be done?

A normal divorce is similar to a normal childbirth, which makes natural progress by itself, but a divorce from a man who neither performs his duties as a husband nor consents to divorce his wife is similar to an unnatural and abnormal birth in which, with the help of a doctor and a surgeon, the new child has to be delivered.

Whether some marriages are a cancer which the wife must suffer and put up with:

Now let us see what Islam says about this kind of divorce and this kind of man. Does it still say that the matter of divorce depends completely upon the will of the husband? If this kind of man does not agree to a divorce, should the wife suffer and put up with it? Does Islam helplessly wash its hands before each of them and observe this cruel position from afar?

The belief of the majority of jurisconsults is the same. They believe that there is no remedy for this in Islam. As if this is a sort of cancer, and as if, by chance, some individuals are made a victim of it and there is no remedy for them. The woman must grin and bear it till eventually she meets her end.

In my own opinion this way of thinking is absolutely inconsistent with the accepted principles of Islam, the religion which always declares its belief in justice, "*qiyãm bi-qisṭ* " (the upholding of justice), that is, which considers that the real and the basic purpose of all the prophets of God was to maintain and uphold justice :

لَقَدْ أَرْسَلْنَا رُسُلَنَا بِالْبَيِّنَاتِ وَأَنْزَلْنَا مَعَهُمُ الْكِتَابَ
وَالْمِيزَانَ لِيَقُومَ النَّاسُ بِالْقِسْطِ

Indeed, We sent Our Messengers with the clear signs, and We sent down with them the Book and the Balance so that men might uphold justice. (Qur’ãn, 57:25)

So, how is it possible that for such a clear and glaring injustice as this no remedy has been provided. As if it is possible that Islam has arranged its laws in such a way that as a result of them a miserable person would suffer like terminal cancer patient.

It is regrettable that some individuals, in spite of their admission and acknowledgement that Islam is the religion of justice, and in spite of counting themselves as followers of the doctrine of justice, express an opinion like this. If it is agreed that we can ascribe an unjust law to Islam under the excuse of ‘cancer’, there can be no grounds for raising an objection to some other people’s oppressive law which excuses itself as a ‘tetanus’, and someone else’s law which counts itself as ‘tuberculosis’, and someone else’s as ‘paralysis’, and anothers’ on some other pretext, and their excuses should therefore be acceptable.

If it is really like this, what about the principle of justice which is the foundation stone of Islamic legislation, and what about the establishment of justice which was God’s main purpose in sending the prophets.

They say ‘cancer’, I say all right, let it be cancer. But if a patient suffers from cancer, and a minor operation, if promptly done, can cure the patient, what then?

A woman submits herself to a man as a partner for life, and afterwards there is a change in the state of affairs, the circumstances take such a turn that the husband takes undue advantage of

his authority and also refuses to divorce her. He takes this step only to prevent her from marrying some suitable man, and not so as to live with her thereafter amicably as husband and wife, and leaves her, in the words of the Qur'ãn, *like someone hanging on.* No doubt, such a woman is confined like a cancer patient, although, as a matter of fact, she suffers from a kind of cancer which can be cured by means of a minor operation. The patient can become well, and can completely recover, by means of a minor operation. This kind of operation is possible at the hands of competent religious authorities and judges.

As we pointed out in our previous articles, one of the two difficult problems in our society is the abstention of a section of merciless men from divorce, and this act of severe cruelty they commit in the name of and under the pretext of religion. These cruelties are the outcome and an offshoot of a wrong conception of Islam, which, according to them, says: " A woman must bear such cruelties like a terminal cancer patient." This has created an impression of Islam which is more harmful than any of the evil propaganda against our faith.

In spite of the fact that the arguments concerning this matter are of a rather technical and a specialised nature and are somewhat out of place in these articles, I think it worthwhile to examine the factors surrounding this subject. My object is to show the pessimists that what Islam really says is different from the above nonsense.

Deadlocks :

Such deadlocks as this are not limited to matters of marriage and divorce. In other spheres of life, say, in money matters, situations like this present themselves. Firstly, let us see what Islam has done in matters other than marriage and divorce as regards certain difficult situations. Did it leave them as deadlocks and as irremediable phenomenon, or did it disregard the idea of a deadlock, and find a remedy ?

Suppose two individuals get the right of ownership by succession or by some other way to an indivisible property like a jewel, or a ring, or an automobile, or a rare painting, and do not agree to make use of it in partnership. Neither of them agrees to the suggestion that the property should remain for sometime with one of them and for sometime with the other. Neither of them is prepared to sell his share to the other partner. Thus, they do not arrive at any mutual agreement about making use of that thing. Also, we know that if one of them makes use of it, it depends upon the permission and consent of the other. Now, what should be done in situations like this? Should that property be left alone without being used and the matter be left as too complicated and insoluble? Or has Islam provided a remedy and a solution for situations like this?

The fact is that Islamic jurisprudence does not leave a problem like this as insoluble. When there is a case of property not being used and going to waste, Islam does not acknowledge the inviolability of the right of ownership and possession. In cases like this Islam allows the religious authority to deal with it as a matter of social welfare, to take his decision on it as a problem of dispute, despite the will and obstinacy of the owners, and to make the correct arrangements. For example, the article in question may be rented out, and the rent may be divided according to their shares; or the property may be put up for auction and the sum received may be shared between them. Anyhow, it is the duty of the religious authority or the judge as *“wali-e mumtani‘”** to make proper arrangements. The owners of the property may agree or may not agree; it is immaterial.

Why is the right of ownership, which is a legal right, not kept in view? For the good reason that another basic principle is

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* *“wali-e mumtani‘ ”* (the guardian of withheld rights) is the name for the religious authority in his position as the restitutor of a right which one person claims from another when the latter will not give that right.

being taken into account. The principle of preventing property from going to waste and lying unused. Regard for ownership and possession by the owners is to be observed, as long as that right does not lead to the waste of property and wealth.

Suppose that the disputed item is precious stone or a sword or some other thing like this; and that neither of the owners is prepared to sell his share to the other partner; but suppose that each of them agrees to break the item into two, and each one is ready to accept half of it as his share. It means that they have gone to such a limit in their begrudging and ill-will that they are prepared to render the property worthless and spoil it. It is obvious that a precious stone, or a sword, or an automobile, when it is broken into two, becomes useless. Does Islam allow this? No. Why not? Because this is a waste of property.

'Allãmah Ḥillī*, one of the most celebrated jurisconsults in Islamic history, said: "If they want to do an act like this, the religious authority should prevent them from taking this step. The assent and agreement of the owners of the property is not enough for them to be allowed to do something like this."

The deadlock of divorce :

Now let us see what is to be done in the problem of divorce. If the man has an incompatible attitude, and does not grant those rights and perform those duties, which he is bound by Islam to do,

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* Jamãlu 'd- Din Ḥasan ibn Yũsuf ibn 'Ali ibn al- Muṭahhar al-Ḥillī (648/1250 — 726/1325). Apart from his studies in law, theology and *uṣũl* (principles of faith), he also studied philosophy with Naṣīru 'd-Dīn aṭ-Ṭũsi, whose *Tajrīd* he commented on (*Sharḥ Tajrīd al-i'tiqãd).* He wrote more than 500 works altogether. His move to Iran in 708/ 1305 and conversion of the Īl-Khãnīd of Iran from Sunnism to Shi'ism was one of the factors in determining Shi'ite Islam as the official religion of Iran. (tr.)

what is to be done? Some of those duties are financial (maintenance). Some of them are moral (courteous behaviour), and some concern sexual matters (the right of sexual relations and intercourse). If he does not grant these rights and fulfil these responsibilities, or some of these responsibilities, and, in spite of that, is also not prepared to divorce the wife, what course is to be adopted. Does the maxim of (*aṣl-e lãzim*) 'priority of the principle' or 'the matter of priority' apply in this case so that Islam can allow the religious authority or the judge (*qãdī*) to take proper steps, in the same way as it allowed them in the matter of property; or does that maxim or principle not apply here ?

The view of Ãyatu' llãh Ḥillī:

Henceforward I would like to place this discussion in the hands of one of the first rank jurisconsults of our time, Ãyãtu'llah Ḥillī, who lived in Najaf.* This illustrious jurisconsult has given his view on this subject in a book called *Ḥuqũqu 'z-zawjiyyah* (Conjugal Rights).

The summary of his opinions in so far as they are related to the rights of women and limitations on men are as under :

"Marriage is a sacred contract and is at the same time a kind of partnership between two persons, and this brings about a series of contracts between the two of them. The peace and prosperity of each one of them depends only upon compliance with the terms of those contracts. Moreover, the prosperity of society as a whole also lies in their prosperity and the performance of the terms of the contracts concluded by each one of them.

"The main rights of the wife are maintenance, dress, sexual

* The centre of Shi'ite religious education in Iraq, and the resting place of Imãm 'Ali (a.s.).(tr.)

relations and intercourse as husband and wife with courteous behaviour. If the man neglects to perform his duties towards his wife, and also abstains from divorcing her, what is the proper course for the wife to pursue, and how should the husband be dealt with?

"In eventualities like this, two courses become incumbent. One course is that the religious authority should have the right to intervene and by granting a divorce settle the matter for good. The second course is that the wife herself should, in the same way as the man, refrain from performing and complying with her part of the contract.

"Now, regarding the first line of action, namely, the intervention of the religious authority, let us see under what principle and on what grounds the religious authority has the right to intervene in situation like this.

"The Qur'ãn in *surah al-Baqarah* (The Cow) makes the following commandment :

الطّلاقُ مرّتان فَإمْسَاكٌ بمَعروفٍ اَوْ تَسْريحٌ بِإحْسَانٍ . . .

> *Divorce is twice; then honourable retention or setting free kindly . . .* (2:229)

and again in *sũrah al-Baqarah* it is ordained:

و اِذا طَلّقتُم النّساءَ فبلَغْنَ اَجَلهُنَّ فَامْسِكوهُنَّ بمَعروفٍ اَو سَرّحوهُنَّ بمعروفٍ ولا تُمسِكوهُنَّ ضِراراً لِتَعْتَدوا وَمَن يفعَلْ ذلك فقدْ ظَلَمَ نَفْسَهُ.

> *And when you divorce women, and they have reached their term, then retain them honourably or set. them free honour-ably; and do not retain them by force, to transgress; who-ever does that has wronged himself.* (2:231)

"From these verses a general principle can be deduced and that is that every man in family life should make a choice between two

alternatives: either he must fulfil all rights and perform all duties politely ('honourable retention') or break the tie of the union and set the woman free ('setting free kindly). Any third possibility that he may neither give her rights properly and politely nor divorce her, is not known in Islam. The phrase: *And do not retain them by force to transgress* negates this very possibility.

"It is not unlikely that the above phrase may connote a general rule; that is, it may include those cases when a husband intentionally and out of negligence makes the life of his wife difficult and miserable, and it may also include those cases where, in spite of the husband not being at fault intentionally, as far as the matter of honourable retention is concerned, there is nothing but loss and hurt for the wife.

"Although these verses were revealed in connection with the period of *'iddah* and the revocation of divorce or its non-revocation by man, and throw a light upon the proper course of action for him, yet he is advised that the revocation must be with the intention of behaving considerately and looking after the wife and not of harming or hurting the poor woman. Nevertheless, it is not limited exclusively to that occasion. It lays down a general principle, and lays down the rights of a wife for all times and in all conditions. It signifies that a husband should choose for himself one of the two above-mentioned alternatives, and that there is no third course possible for him.

"Some jurisconsults are involved in an error at this very juncture, and have thought that these verses are exclusively about those men who want to revoke the divorce within the period of *'iddah.* No, that is not so. These verses shed a light on the duties of all husbands, in all circumstances, in respect of their wives. Our argument concerning this, besides the sequence and trend of the verses, is that the Holy Imãms have expounded and cited these verses on occasions other than *ʿiddah.* For example, Imãm al-Bãqir (a.s.) said, concerning a man who makes a vow of " īlã' " (which means that somebody declares on oath that he will not have

have sexual relations with his wife for four months or more) that he must, after the four months have passed, either break his oath and make atonement, or else he must divorce his wife, for the good reason that God commands, *honourable retention or setting free kindly.*

"On another occasion, when a man had appointed another man as his attorney to make a marriage contract with a woman on his behalf and to fix a dower, the attorney complied with the request but the man who had appointed him as his attorney after-wards denied having given him that authority. Imãm as-Ṣãdiq (a. s.) said that for that woman there was no obstacle to her choosing another husband. Nonetheless, if that man had really made another person his attorney and the marriage that took place was through a rightful attorney, the man who appointed the attorney must, for the sake of God, divorce that woman and must not let her go without a divorce. The Imãm said, 'because God in the Qur'ãn commands: *then honourable retention or setting free kindly*'. Thus, it is clear that the Holy Imãms have treated this verse as a general principle, and not limited it to specific occasions.

"When a man neither performs the duties which he must perform as a husband, nor divorces his wife, the religious authority should call the husband. Firstly, he should ask him to divorce his wife. If he does not divorce her, the religious authority should divorce them. In a tradition, related by Abu Baṣīr, Imãm as-Ṣãdiq (a.s.) said, If there is anyone who has a wife and does not arrange for her dress and does not provide her maintenance, it is obligatory on the leader of the Muslims to enforce a separation between them (through divorce).' "

This was a very short summary of the views of a contemporary first-rank jurisconsult. Anyone who wants to study his views in detail may go through the book *Conjugal Rights,* which is a compilation of his lectures for his students.

As you have seen, the phrase *retention honourably or setting free kindly* is a principle and a general rule in the frame of which the Holy Qur'ãn has inscribed the rights of wifehood. Therefore, under this principle, and in accordance with the emphasis with which the phrase *and do not retain them by force to transgress* is ordained, husbands are not allowed in any case to take undue advantage of their authority. A man is not allowed to keep his wife by force if he has no intention of living amicably with her and only wants to keep her in distress and prevent her from marrying another man.

Other arguments and citations :

Besides, the references and arguments which have been mentioned in the book *Conjugal Rights* there are other, more convincing arguments and references to support our viewpoint. On the strength of those arguments we arrive at the conclusion that in the view of Islam the Qur'ãnic phrase *retention honour-ably and setting free kindly* is a general and absolute principle. Within that framework the rights of women can be read and should be observed. The more a man studies the pros and cons of this point, the more clear he will find it, and the more intensely he will realize the soundness of the regulations of the sure religion of Islam.

In *al-Kãfī,* vol.5, p.502, Imãm aṣ-Ṣãdiq (a.s.) is quoted as saying:

إذا اَراد الرّجُل أن يتزّوج المرأةَ فَليقُل : أقررتُ بالميثاق الّذي أخذَ اللهَ :
إمساكٌ بمعروفٍ اَو تَسريحٌ بإحسان.

which means that whenever a man wants to marry a woman he should say: "I acknowledge the promise which God has taken from me, that I will retain the woman honourably or shall set her free with kindness."

In verse 21 of *surah an-Nisã',* it says:

وَكيفَ تَأخُذونَهُ وَقدْ اَفضى بَعْضُكُم الى بعضٍ و أخَذْنَ مِنكُم ميثاقاً غَليظاً

How shall you take it, when each of you has been privily with the other, and they have taken from you a solemn compact ?

The Shi‘ite and Sunni commentators both agree that by ‘solemn compact’ is meant the same covenant that God has taken from men with the phrase: *retention honourably or setting free kindly.* This is the same promise about which Imãm as-Ṣãdiq (a.s.) said that, on the occasion of marriage, the man should promise and acknowledge; *retention honourably or setting free kindly.*

There is a well-knowing *ḥadīth* of the Prophet which he said on the occasion of his last *ḥajj (ḥajjatu‘l-widã‘)* and which the Shi‘ah and Sunni have both related:

إتّقوا الله في النّساء فإنكُم اَخذتُمُوهنَّ بِأمانَةِ الله واستحللتُم فروجَهُنَّ بكلِمَةِ الله...

“O people! Keep Allãh in mind and fear Him in respect of women, because you have taken them as a trust from Allãh and you have made lawful their chastity for yourselves by the word of Allãh.”

Ibn al-Athīr* in *Kitãb an-nihãyah* said: “by word of Allãh”, which the Holy Prophet said, and by which the chastity of women becomes judicial, is the same as that which is expressed in the Qur’ãn by the phrase: *retention honourably or setting free kindly.*

The view of Shaykh at-Tã’ifah : **

Shaykh Ṭũsī in the book *Khilãf,* vol.2, p.185 after expressing his view regarding ‘impotence’, said that after it is proved that a man is impotent, the wife has the right to dissolve the marriage

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* Abũ ‘s-Sa‘ãdah Majdu ’d-Dīn al-Mubãrak ibn al-Athir (544/1149 — 606/1210) worked in Mosul for its ruler and compiled a collection of sayings and acts of the Holy Prophet called *an-Nihãyah fī gharību ’l-ḥadīth wa ’l-athar.*

** See next page.

and there is consensus of opinion of the learned on this point. At that juncture he said: "and also it has been argued on the grounds of the verse *retention honourably or setting free kindly,* that, because an impotent man is unable to retain his wife honourably and properly, he should set her free."

From all this it can be understood for certain that Islam never allows a deceitful man to take undue advantage of the right of divorce, and retain a woman as a prisoner.

However, from what has been said it should be understood that not everyone who calls himself a *qãdī* has the right to interfere in matters like this. In the eyes of Islam, there are very serious and stringent conditions to fulfil to be eligible and to be competent as a *qãdi.* However, this is not the occasion to define and explain them.

The other point which requires due attention is that from the Islamic standpoint, in spite of all Islamic efforts to maintain the peace of the family, the occasion for judicial divorce only occurs in very rare, exceptional and uncommon cases. Islam never allows divorce to take the form which it has taken in Europe and America, examples of which we read daily in the newspapers. For example, a wife complains and demands a divorce from her husband on the ground that he does not appreciate the film which she likes most, or that her husband does not kiss Fifi, her dear dog, or other ludicrous matters like this, which are manifestations of the breakdown of human values.

** Shaykh at-Ta'ifah Abu Ja'far Muhammad ibn al-Ḥasan ibn at-Tusi (385/995 — 460/1076). The greatest Shi'ite jurisconsult of the 5th/ 11th century, whose title, Shaykh at-Ta'ifah, means "the Chief Scholar of the Shi'ite Sect." His book *Kitdb al-khilãf fi'l-fiqh* is a comparison of the difference sects of Islam in the domain of jurisprudence.

The worthy reader will, we hope, have fully understood, by what we have said in these few articles, the points which we raised and set down to be thought over at the beginning of our section. In this section we have detailed five points regarding divorce, in the following order:

1. The unimportance of divorce and the lifting of all moral and social checks and hindrance from control over divorce.

2. The concept that all marriages are eternally binding, and that divorce is not permissible for any reason. (The view of the Catholic Church).

3. That marriage can be terminated by the man, but not by the woman in any circumstances.

4. That marriage should be terminable by the man as well as by the woman under special conditions, and that the way to put this into practice should be one and the same for both of them.

5. That recourse to divorce should be open for man and for woman too. It should not be altogether barred, but the door by which the husband should come out of the marriage should be is different from the door for the wife.

We have said in this section that Islam approves the fifth viewpoint. From what we have said regarding the conditions at the time of the conclusion of the marriage contract and also on the subject of judicial divorce, it is, we hope, clear that, although Islam does not recognize divorce as taking the form of a natural right for woman, yet it has not altogether barred the way for her and has provided special doors for her.

On the subject of judicial divorce, we could have said more in the light of the guidance of the Imãms and the jurisconsults of all the sects of Islam, and how, according to those views, laws are enforced in all the countries of Islam. Anyhow, we think that what we have said in these articles will suffice.

PART ELEVEN

POLYGYNY

* Kinds of polygamy in human history.
* Islam annulled three out of four systems of matrimony that were usual in the pre-Islamic period.
* Sexual communism and polyandry.
* Why polyandry failed, but polygyny is currently acceptable.
* For a woman, in contrast to man, the spiritual element of marriage is more important than the material element.
* Polygyny is a part of the rights of woman not of man.
* Historical reasons for polygyny.
* Is polygyny a product of the climate of the east ?
* Occidental and oriental forms of polygyny.
* The reason for the absence of the custom of polygyny in the west is the prevalence of permissiveness and not the regulations of Christianity.
* In polygyny, man was sometimes tyrannical, sometimes justified, and sometimes he satisfied the rights of women.
* The right of woman in polygyny.
* Statistics and figures speak for themselves.
* The number of women of marriageable age always exceeds the number of men of marriageable age. Why ?
* The "Declaration of Human Rights" has said nothing about one of the most important human rights.

* According to the legal opinion of the men in power in England, if a woman’s “rival-wife” has a beard and moustache, there is no objection to polygyny.
* Is man polygynous by nature ?
* It is said that man is legally a monogamist but in practice a polygamist.
* A corrupt environment creates factors of disloyalty in man, not his essential nature.
* Twentieth- century man has succeeded in curtailing his obligations towards woman and has got what he wanted.
* The crisis created when a woman is left unmarried is more dangerous than any other crisis.
* The difficulties in, and drawbacks to, polygyny.
* The belief of most men is in One God and one wife.
* Love and feelings are not divisible and cannot be supplied on ration.
* Polygyny turns the home environment into a battlefield, whereas it should inspire love and kindness.
* How can a man who has already sold his shares in marriage sell them again.
* Role of Islam in the matter of polygyny.
* Islam put limits and conditions on polygyny.
* The financial and physical situation in the case of polygyny.
* The aversion of modern man to polygyny.
* The thing which has replaced polygyny in this century is sin, not faithfulness.

POLYGYNY

Monogamy is the most natural form of matrimony. In monogamy the spirit of special exclusiveness exists, that is to say, of individual and particular "having", which is, of course, different from the feeling of the possession of material things. In monogamy both the wife and the husband consider the sentiments, affections and sexual advantages from the other as his or her own and special to him or her.

The converse of monogamy is polygamy or the shared condition of being a wife or husband. Polygamy, or the shared condition of being a wife or husband, can be envisaged in serveral forms.

Sexual communism :

One of these forms is that there is no special exclusiveness on either side; no man has an exclusive relationship with any particular woman, and no woman is exclusively tied to any man. This imagined situation is the very one which is known as sexual communism. This form pre-supposes the rejection of family life.

Neither history nor even guesses and theories concerning pre-history give any clue of a time when human beings had absolutely no family life at all and when sexual communism prevailed. The way of life which they call by this name and which they claim existed among some primitive peoples was really a middle stage between an exclusive family system and sexual communism. It is said that in some tribes several brothers would marry several sisters jointly, or that a group of men from one tribe would jointly marry a group of women from another tribe.

In the first volume of *The Story of Civilization,* Will Durant writes : "In a few cases we find "group marriage," by which a number of men belonging to one group married collectively a number of women belonging to another group. In Tibet, for example, it was the custom for a group of brothers to marry a group of sisters, and for the two groups to practise sexual communism between them, each of the men cohabiting with each of the women. Caesar reported a similar custom in ancient Britain. Survivals of it appear in the "levirate," a custom existing among the early Jews and other ancient peoples, by which a man was obliged to marry his brother's widow."

Plato's view :

According to what can be inferred from Plato's *Republic,* and from what historians in general confirm, it seems that he, in his theory of philosopher- kings and king- philosophers, proposed a shared family for this class of citizen. As we know, some communist leaders of the nineteenth century also made the same proposal, but, according to the book *Frũ'īd va taḥrīm-e zanãshu'i bã maḥãrim* (Freud and the Forbidding of Incest) *, as a result of numerous bitter experiences, the law of monogamy was recognized as the only official law in 1938 by some of the powerful communist countries.

* Translated from the Persian, original untraced. (tr.)

Several husbands :

Another form of multiple partnership is that of polyandry. In other words at one time a woman may have more than one husband. Will Durant writes: “This state of affairs can be observed in the tribe of Tuda and in some of the tribes of Tibet.”

In *Ṣahīḥ al-Bukhãrī,* * ‘Ã’ishah (the Prophet’s wife), is reported to have related that “In Arabia in the pre-Islamic period four kinds of matrimony were practised: One kind was the same as that which prevails at present, that is, a man, through the father of the girl, asks for a girl’s hand in marriage and after settling the dower marries her. As the child, born to that girl after marriage is of determined parenthood, the father’s responsibilities towards that child are clear. In another kind, the man, at the same time as he is married to a particular woman, transfers or entrusts her wifehood to some other man for a limited period for the purpose of having noble children through him. The custom was that he himself kept away from his wife and advised her to surrender herself to that particular man, as long as she had not become pregnant by that man, while he himself continued to keep him-self away from her. As soon as it was established that she was pregnant, he renewed his sexual relations with her. They did this with those men whom they considered worthier than themselves to make the woman pregnant. In all good faith they took this step for the improvement and welfare of their progeny and the improvement of their stock. This kind of matrimony, which was matrimony during the period of matrimony to another man, was called as *“nikãḥu ’l-istibḍã‘ ”* (*i.e.,* marriage pact from which some benefit is sought). Another kind of matrimony was that a group of men, less than ten in number, used to arrange to have sexual relations with a particular woman. When the woman became pregnant, and a child had been

* The first of the *Kutub as-sittah,* or “six” correct books of *ḥadith* transmitted in Sunni Islam. Compiled by Abu ‘Abdillah Muhammad ibn Ismã‘īl al-Bukhãrī (194/256 – 810/870).

born to her, the woman summoned all the members of that group, and, in conformity with the convention of that period, none of them could refuse to be present at her call. Everyone used to turn up and on that occasion that woman made a choice of a father for her child from amongst that group according to her own inclination. That man, however, was not entitled to refuse to acknowledge that child as his own. Thus, the child was considered to be the legal and official child of that man.

"The fourth form of conjugal relationship was that the woman was officially a kind of prostitute. Any man, without exception, could have sexual intercourse with her. Women of this class used to set up a flag on the top of their house, and by that sign they could be distinguished. Whenever a child was born to a woman of this class, the women gathered together all the men with whom she had sexual intercourse and then fortune-tellers and physiognomists were called in. In the light of the distinctive marks and features of the child, the physiognomists declared their expert opinion as to whom the child belonged, and that chosen man was obliged to accept the view of the physiognomists and had to consider that child his official child.

"All these systems of conjugal relationship existed in the pre-Islamic period till Allãh chose Muhammad (s. a. w. a.) for the Prophethood, and he annulled all these customs except the one which is at present in practice."

By this it is evident that the custom of plurality of husbands existed among the Arabs of the pre-Islamic age. In *The Spirit of Laws,* Montesquieu * wrote :

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* Montesquieu (1689 — 1755) took fourteen years to write *L'Esprit des loin.* It was translated into English as *The Spirit of Laws.* (*tr.*)

"Albuzeir-el-hassen [Abũ aẓ-Ẓahīr al-Ḥasan], one of the Mahomedan Arabs who, in the ninth century, went into India and China, thought this custom [i.e., polyandry] a prostitution." (vol.1, p.272.)

He also wrote :

"In the tribe of the Naires, on the coast of Malabar, the men can have only one wife, while a woman, on the contrary, may have many husbands. The origin of this custom is not I believe difficult to discover. The Naires are the tribe of nobles, who are the soldiers of all the nations. In Europe soldiers are forbidden to marry; in Malabar, where the climate requires greater indulgence, they are satisfied with rendering marriage as little burden-some to them as possible: they give one wife amongst many men, which consequently diminishes the attachment to a family, and the cares of housekeeping, and leaves them in the free possession of a military spirit." (*ibid.,* p.273)

The difficulty with polyandry :

The greatest difficulty that lies with polyandry, and which has been the cause of this custom not being successful in practice, is that there is a problem because the parentage of the children is not known. In this kind of conjugal relationship the connection between a father and his children is unspecified. Just as sexual communism could not find a foot-hold, so also polyandry could not make itself popular in any society worth the name. The reason is that, as we have pointed out in one of the preceding articles, family-life, which is the establishment of a secure shelter for the next generation and a definite attachment between the previous and the future generations, is an instinctive demand of human nature. If, incidentally, and as an exceptional case, polyandry happened to exist among certain categories of men, it does not serve as an argument for the theory that the setting up of one's own family is not the result of an instinctive human urge; just as preference for an unmarried life, and a dislike for setting up

a family among a section of men or women is only a kind of deviation and cannot be adduced as an argument to show that human beings are not inherently disposed to living in families. Polyandry is eventually not only inconsistent with man's innate desire for exclusivity and love for his children, but it is against the nature of woman also. Psychological research has proved that women are in favour of monogamy more than men.

Polygyny :

The other form and the other kind of multiple partnership is polygyny. Polygyny, unlike polyandry and sexual communism, is more usual and has a comparatively more accepted status. It does not exist only in savage tribes, but many civilized nations have also adopted it. Leaving aside the pre-Islamic Arabs, the custom existed also amongst the Jews, amongst the Iranians in the Sassanid period, and in some other nations.

Montesquieu wrote : "This law [equality in behaviour towards all wives in polygyny] is also in force in the Maldivian Isles, where they are at liberty to marry three wives." *(The Spirit of Laws,* vo1.1, p.274)

He also wrote : "Some particular reasons induced Valentinian to permit polygamy in the [Roman] empire. That law, so improper for our climates, was abrogated by Theodosius, Arcadius and Honorious." *(ibid.* p.271)

Islam and Polygyny :

Islam did not completely do away with polygamy, although it did do so as far as polyandry was concerned. Instead, it limited and restricted it. It abolished its non-restrictedness and confined it to a maximum of four wives. Islam, moreover, laid down conditions and restrictions, and did not allow everybody to have several wives. We shall comment upon those limits and restrictions in the

coming sections, and shall likewise throw light upon the reasons why Islam did not absolutely abolish polygyny.

It is strange that in the Middle-ages, among all the propaganda that was carried out against Islam, it was alleged that it was the Prophet of Islam who introduced polygyny into the world for the first time, and it was claimed that the foundation of Islam lay in polygyny. It was asserted that the cause of the speedy conversion to Islam among the various nations and peoples of the world is the permissibility of polygyny, and it was also given to be understood that the prime cause of the decline of the east was again polygyny.

In the first volume of his *The Story of Civilization* Will Durant writes : "Medieval theologians thought that Mohammed had invented polygamy, but it antedated Islam by some years, being the prevailing mode of marriage in the primitive world. Many causes conspired to make it general. In early society, because of hunting and war, the life of the male is more violent and dangerous, and the death rate of men is higher than that of women. The consequent excess of women compels a choice between polygamy and the barren celibacy of a minority of women; but such celibacy is intolerable to peoples who require a high birth rate to make up for a high death rate, and who therefore scorn the mateless and childless woman.

"Doubtless polygamy was well adapted to the marital needs of a primitive society in which women outnumbered men. It had a eugenic value superior to that of contemporary monogamy; for whereas in modern society the most able and prudent men marry latest and have least children, under polygamy the most able men, presumably, secured the best mates and had most children. Hence polygamy has survived among practically all mature peoples, even among the majority of civilized mankind; only in our day has it begun to die in the Orient. Certain conditions, however, militated against it. The decrease in danger and violence, consequent upon a settled agricultural life, brought the sexes towards an approximate

numerical equality; and under these circumstances open polygamy, even in primitive societies, became the privilege of the prosperous minority. The mass of the people practised a monogamy tempered with adultery, while another minority, of willing or regretful celibates, balanced the polygamy of the rich."

In *La Civilisation des Arabes,* Gustave Le Bon* writes: "There is no custom more despised and on which more erroneous ideas have been pronounced than polygamy. For the most serious of historians, polygamy has been the corner-stone of Islamism, the principle cause of the spread of the Koran, and at the same time of the decadence of the Orientals. These peculiar assertions are generally followed by indignant tirades on the unfortunate lot of the miserable women confined to the far reaches of the harem, guarded by ferocious eunuchs, and killed without pity when they no longer please their master.

"Such a picture is the opposite of the truth, and the reader who wishes to read this chapter putting aside his European prejudices, will, I hope, be convinced that oriental polygamy is an excellent institution which greatly raises the moral standard of the peoples who practise it, gives much stability to the family and, as a final result, renders the woman infinitely more respected and more happy than in Europe.

"Before embarking on the proof of this, I will recall, firstly, that polygamy is completely independent from Islamism, for it existed before Mahomet among all the peoples of the East: the Jews, the Persians, the Arabes, etc. Those nations who adopted the Koran, therefore, had nothing to gain on this score by adopting

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* Gustave Le Bon (1841 — 1931), doctor, psychologist and sociologist, travelled in North Africa and subsequently in India. Apart from *La Civilisation des Arabes* he also wrote many other books, his most famous being *Les Lois Psychologiques de Revolution des Peuples.* (*tr.*)

polygamy. There has never been a religion, anyway, strong enough to transform traditions to the point of creating or preventing a similar institution. It is simply the consequence of the climate, of race and the various conditions of existence particular to the Orientals . . .

"In the West, where the climate and the temperament are however very much less demanding, monogamy is no longer to be found except in the law, and no one will contest, I think, that it is very rarely to be found in the behaviour of people. I cannot see in what way the legal polygamy of the Orientals is inferior to the hypocritical polygamy of the Occidentals; rather, I can, on the contrary, very well see in what way it is superior. One can therefore perfectly well understand how the Orientals who have visited our great cities find our indignation towards them to be most strange and judge it most unfavourably." (pp.421- 2)

Truly, Islam did not initiate polygyny but limited its number, and at the same time laid down stringent conditions for it. Amongst most of the peoples and the communities which accepted Islam, this practice was customary, and under the commandments of Islam they had to comply with the limits and the conditions ordained by Islam.

Polygyny in Iran :

The Danish Pahlavi scholar Arthur Christenson wrote: "[In Sassanian Iran] the family was based on polygamy. In practice, the number of wives a man had was related to his means, and, in general, the less well-off probably only had one wife. The master of the house, the *kadhagh-khvadhãy,* enjoy the right of *patria potestas* (*sardarīh-i dũdhagh*). The principle wife, *zan-i pãdeshãyīhã,* the "privileged" wife, was distinct from the "second-rank" wife, the "servant wife" (*zan-ī tchghãrīhã).* The legal situation of the two classes of wives were different. It would appear that bought slaves and women plundered in war were in the second class. We do not know if the number of "privileged"

wives was limited, but the case of men who had two principle wives is often mentioned in matters of law. Every privileged wife was "woman of the house" ***(kadhagh-banũgh),*** a household being specially set aside, it seems, for each one. The privileged wife had the right to be fed and kept by the husband for all her life; the same right belonged to her sons up to the age of majority and to her daughters until marriage. As for a "servant-wife", only her male children were adopted into the father's family." *

In *Tãrikh-e ijtimã'i-e Irãn az inqirãḍ-e Sãsãniyan to inqiraḍ-e Umawiyãn* (The Social History of Iran from the Fall of the Sassanids to the Fall of the Umayyids), written by late Sa'īd Nafisī, it is stated that: "The number of wives that a man could have was unlimited and in Greek documents it has been found mentioned that a man sometimes had several hundred wives in his house."

In *The Spirit of Laws* Montesquieu relates from the Roman historian Agathias that: "In the reign of Justinian, many philosophers, displeased with the constraint of Christianity, retired into Persia. What struck them most . . . was that polygamy was permitted amongst men who did not even abstain from adultery." (vol. 1, p. 274) **

It should not be passed over unmentioned that the philosophers of Byzantium took refuge in the court of Anushiravan, King of Iran, and not in the court of Khusru Parviz. Montesquieu

* A. Christenson: *L'Iran sous les Sassanides.* (2èmè ed. Copenhague, 1944) pp.322-323 (translated from the French).

** In the French original, unlike the Persian translation, Khusru Parviz is not mentioned; the reference is only to "*La Perse* ". The Arabic translation has Kasra, seemingly on the correct assumption that the reference was to the time of the Khusru, Anushiravan. The Persian translator seems to have thought the reference was to Khusru II, Khusru Parviz. See what follows. (tr.)

mistakenly wrote the name of Khusru.

Amongst the Arabs there was no limit to the number of wives. The restrictions ordained by Islam and the laying down of a maximum limit in the number of wives was a difficult problem for a number of Arabs who had more than four wives. There were certain individuals who, it so happened, had ten wives, and they were obliged to give up six of them.

So it is clear that Islam did not introduce or originate polygyny. It has, on the other hand, laid down restrictions and limitations on it, but of course, it by no means abolished it absolutely or annulled it. In the coming chapters we shall examine the causes of polygyny among humans and shall look into the question as to whether the cause of it is the high-handedness of man and his domination over woman, or whether there are some special necessities that have produced it. We shall examine those necessities and shall see whether certain factors are geographical and relate to particular regions or whether they are universally applicable. We shall look closely into the question of why Islam did not abolish this custom and also the limits, restrictions and conditions that it has laid down in connection with polygyny. We shall examine what, after all, the reasons are that human beings, men and women, are against polygyny. Does it have its root-cause in any human or moral reason, or are some other factors at work? These are the points which we shall discuss in the forthcoming chapters.

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THE HISTORICAL CAUSES OF POLYGYNY (1)

What are the historical and social causes of polygyny? Why have numerous peoples of the world, especially the Orientals, adopted it while some peoples, like the occidentals, never adopted it? Why, out of the three forms of multiple marriage, was only polygyny accepted and favoured by people, unlike polyandry and sexual communism? The latter two forms were either never adopted, or else were very rarely resorted to and were by way of exception.

Until we, closely examine these causes, we cannot discuss the Islamic view of polygyny and we also cannot properly study this question and how it has any bearing on present day human requirements.

If we overlook the numerous psychological and social considerations that exist, and think like many superficial writers, it is enough to explain and interpret the historical and social causes of polygyny according to the same well-played tune which is so often repeated in connection with these subjects. We also can say, "It is very obvious what the cause polygyny is, and what it was in the past. It is the tyranny and domination of man and the slavery of woman. The root-cause of it is the patriarchal system. As man has had the domineering position and has been the "sovereign" over woman, he has moulded all customs and rules in his favour. He has, accordingly, made polygyny a rule for his own benefit and against the interests of woman for centuries. As the woman has been under the subjugation of man, she could not establish polyandry as a custom in her favour. However, since the present age is an age of the decline of the tyranny of man, the privilege of taking several wives, like very many other wrongful privileges, is giying place to equality and to identical rights."

If we form opinions like this it will be a very superficial and crude way of thinking. Neither has the cause of the custom of polygyny been the tyranny of man, nor has the cause of the failure of polyandry

been the weakness and subjugation of women. Furthermore, neither is the cause of the decline in polygyny the fact that tyranny is on the decline, nor has man suffered any loss in giving up the distinction of having more than one wife. He rather earns an advantage for himself as opposed to woman.

I do not deny that the factor of force and authority was one that brought about changes in human history, and I also do not deny the fact that man, throughout history, had taken undue advantage of his authority over woman. Nevertheless, I do not believe force and authority to be the only factor, especially in the interpretation and explanation of the nature of the family relations of husband and wife. The idea that the use of force was the only force in shaping the history of mankind is due to a lack of insight.

Let us suppose, for a while, that the above viewpoint is correct. Then the rare and exceptional times when polyandry was common, like the pre-Islamic period among the Arabs, or in the days, according to Montesquieu, when it was adopted among the Naires of the coasts of Malabar, were occasions when woman had come into power, had taken her chance and seized the opportunity to impose polyandry upon man. These periods should consequently be regarded as the golden periods for woman, while, as a matter of fact, we know that the days of the pre-Islamic period were dark and awful days for the life of woman. In the preceding section we quoted from Montesquieu, that the custom of polyandry among the Naires was not on account of the authority and honour of woman. The decision was taken by that community for the purpose of keeping the soldiers away from family attachments and so as to maintain the spirit of valour.

Besides, if the cause of polygyny is the patriarchal system or the domination of man, why did occidentals not adopt it ? Was patriarchy confined to the orient ? Had occidentals so closely interwoven Jesus and Mary that from the beginning they believed in equality and identicalness of rights for woman and man ? Was

the factor of authority effective in turning things in favour of man only in the orient, and, in the west, was that factor used only to uphold justice?

Western woman, half a century ago, was the most unfortunate woman in the world. Even in the matter of her own property, she required the guardianship of her husband. Occidentals them-selves admit that in the middle ages eastern woman was far better off than western woman.

Gustave Le Bon* writes: "In the days of the Islamic civilization, women were given exactly the same position and status which European women held a long time after. This meant that after the chivalrous conduct of the Andalucian Arabs, the example was set to be propagated in Europe . . . Among Europeans, chivalrous behaviour, an aspect of which is the gallant treatment of women, came down from the Muslims, and was copied from them. The religion which was able to deliver woman from a low and inferior position and could raise her to a position of respect and honour was Islam and not Christianity, as is commonly imagined. For we see that in the Middle-ages our kings and monarchs had no respect for women, despite their being Christians. After the study of ancient histories, there remains no doubt that in the days before the Moslems taught our forefathers to have kindly feelings and respect for women, our kings and monarchs treated women with extreme brutality . . . " **

Others also have described, almost in the same terms, the condition of women in the Middle-ages. Why, then, in spite of patriarchy, and in spite of all those conditions for the force and authority of man being at their highest in Europe of the Middle-ages, was polygyny not adopted by man ?

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* See note on p.328

** Translated from the Persian, original untraced. (tr.)

The real fact is that where polyandry was common, it was not because of chance and the authoritative hold of women over men, nor was the cause of the abolishing of polyandry the weakness and feebleness of woman, and further neither was the cause of the custom of polygyny in the Orient the force and domination of man, nor was the fact that there is no custom of polygyny in the West by virtue of the faith of occidentals in the equality of authority of woman and man.

The cause of the disappearance of polyandry :

The cause of the disappearance of polyandry is that it is not agreeable to the temperament of either man or of woman. As for man, it is incompatible, firstly, with his tendency towards exclusive and restricted attachment, and secondly, it is discordant with any certainty regarding the fatherhood of the children, on the basis of which attachment to them is a natural and instinctive urge in man. A human being naturally wants to reproduce, and he wants the connection with the future and the past generations to be specified and clearly defined. He wants to know for certain which child he is the father of, and who is his own father. Polyandry is thus unfitting for the human temperament and instinct, while polygamy injures the feelings of neither man nor woman in this respect.

It is said that a group of women, about forty in number, assembled and presented themselves before ‘Ali (a.s.) and put this question to him: “Why does Islam allow man to have more than one wife, and why does it not allow woman to have more than one husband? And is this not an unjust discrimination?” ‘Ali ordered small cups of water to be fetched and every one of those women was handed one cup of water. He then asked the women to pour all that water into a big bowl that was put in the middle of the gathering. The women accordingly poured the water in the bowl, and then ‘Ali (a.s.) asked each one of them to fill up their cup with water again, but stipulated that every one

of them should take out the very same water that she had previously had in her cup and had poured into the bowl. They all asked how that would be possible. The water had become mixed up and separation was impossible. ‘Ali (a. s.) then said that if a woman had several husbands, she would necessarily have sexual intercourse with everyone of them, and then she would be pregnant. How then, he asked, would it be possible to distinguish whose child it was? That is from the point of view of man.

As for the point of view of woman, polyandry is inconsistent with her nature and is also against her interests. A woman does not require man only as a source of, or as a factor in, the satisfaction of her sexual urges, so that it may be said ‘the more the merrier’. A woman wants a man whose heart will be in her hand. He should be her protector and defender. He should be self-denying and devoted to her. He should take effort to bring in money, to present the fruits of his toils and earnings to her, and should look after her with tender care. The money which a man used to pay and still pays a prostitute is the money which that woman used to get and gets in return of her “work” and activity, and not for her financial needs, which are great and several times more than a man’s personal needs, and such a sum is never the same as that money which a man presents to his wife for the attachment of love and affection. Man has always paid for the extensive material needs of woman in self-sacrifice. Also the best and the strongest incentive for work and activity is the peace and the welfare of his homelife, that is, his wife and children.

A woman in polayndry has never been able to attract the protection, love, sincere attachment and devotion of man towards her. That is the reason why polyandry, like prostitution, has always been an object of disgust for woman. And thus, polyandry has been in harmony neither with the taste and requirements of man nor with the taste and requirements of woman.

The failure of sexual communism :

The cause of the failure of sexual communism is the same. Sexual communism, doing away with every personal attachment on either side so that neither has the woman any special interest in any particular man nor the man in any special woman was, as we mentioned before, proposed by Plato, only it was for the circle of the ruling class, that is, the king-philosophers or philosopher-kings, as Plato said. This behaviour was disapproved of not only by others, but Plato himself also deviated from his idea.

A century back Fredrick Engels, the second father of Communism, also proposed this idea and wrote in its defence, but the communist world did' not approve of it. It is said that the Soviet Government, in view of many bitter experiences which followed from the enforcement of Engels' communist family theory, passed laws for the benefit of the family in 1938, and monogamy was adopted as the officially approved communist form of matrimony.

Polygyny might be a mark of distinction for a man, but polyandry has never been, and could never be, a distinctive mark of respect for a woman. The cause of this difference is that man is in quest of the person of a woman, while the woman is in need of the heart and the love of a man and of his devotion. For a man, as long as he has the person of the woman under his control, attaches no importance to the matter of whether the heart of woman is with him or not. This is the reason why, in polygyny, he attaches little importance to matters of the heart and the subtle-ties of delicate feelings. But for a woman the heart and love of a man is the real thing. If she is bereaved of that she loses all.

In other words, in the matter of marriage, two elements hold sway. One of them is material and the other spiritual. The material element of matrimony is its sexual aspects, which in youth are in a state of excitement, and are at their zenith, and which gradually subside and calm down. The spiritual aspect relates to those kind,

tender, sincere sentiments which rule the couple, and which, incidentally, increase with time. One of the differences between man and woman is that for a woman, unlike a man, the latter element is more important than the former. Marriage for a woman means the spiritual aspect more, and for a man the material aspect, or, at least the material and the spiritual aspects of marriage are equal for him.

Besides this, as we said in a previous section and quoted from a European female psychologist as our witness, because woman is the nourisher of the child, both in her womb and at her breast, she has a very special mental attitude which makes her acutely in need of the kind sentiments of her husband as the father of her child. It is to this extent true that the measure of the love of the children very much depends upon the measure of love and attachment of the husband to the mother on the score of his being the father of her child, the factor which has brought the child into existence. This need of the woman can be satisfied only when she has one husband.

Therefore, to compare polyandry with polygyny, and to imagine that there is no difference between the two, and that the cause of polygyny being a custom in some parts of the world is that man was stronger, and to imagine that the cause of a woman not being able to keep polyandry as a mark of distinction for herself is her weakness and frailty, is all a glaring mistake.

Ms. Manuchihriyan in her book *Criticism of the Constitution and Civil Law of Iran,* writes on page 34: "In clause 1049, the Civil Law says: No one can marry the daughter of the brother or of the sister of his wife except with the permission of his wife. . . In case the wife does permit it, her husband can marry the daughter of the brother or of the sister of his wife. Now let us imagine what the consequences would be if the wife did not allow it. Nothing! As they say 'don't worry, there is an alternative. The man will marry someone else'. Very well! But if we reverse the proposition? For example, we say that

the wife cannot marry the son of the brother or the son of the sister of her husband (while she is married to him) except with the permission of her husband. On hearing these words, the blood boils in the veins and people cry out that such a suggestion would be against human principles, and moreover, that it is basically against the nature and the innate disposition of the woman. In reply, it should be said that this proposition is only against the principle of the slavery of woman. Just as property does not have more than one owner, or, if it has, after partition, its produce goes to one owner, the woman also, under the explicit and implicit laws of our land, is in the category of property and consequently she should not have more than one owner . . . ”

On page 73 of her book she says:

“We can say that just as a man can have up to four wives, a woman, so as to become a human should possess similar and equal rights to those which the man has. The result of the logical major and minor premises would be very dreadful for man. Here it is that the blood rises in their veins, and with an excited face and flaming eyes they cry out, ‘how is it possible for a woman to have more than one husband?’ We would very coolly and calmly say in their reply, ‘how can a man have more than one wife?’

“We do not want here to incite to immorality, and also we do not think it proper to be petty and depreciate the piety and chastity of women, but we want to impress upon men that as regards women their ideas and beliefs are not based, as they imagine, upon a strong and unassailable foundation. Woman is one and man is one, each of them is equal. If this right to have up to four wives has been given to men because they are men, women also should have the same right. Even if they are not stronger than men in intellect, it should be acknowledged that in brightness of the spirit and in quality of the soul a woman is not inferior to man.”

As you have seen in the above quoted statements, no difference is

taken into account between polygyny and polyandry except that, because man is strong, he has established polygyny in his favour, while woman has had no independence to defend and safeguard polyandry for the only reason that she was a slave. In the above passage it is also stated that the establishment of polygyny and the banning of polyandry was due to the fact that man was the owner of woman and woman the slave. Because man was the owner of woman, he was in a position to keep several wives, that is, he could possess plenty of wealth. Woman was something owned, and an owned thing cannot have more than one owner. So she could not reap the benefit of having more than one husband.

Incidentally, contrary to the views of the lady writer, her own non-acceptance of polyandry is by itself evidence that man has not been looking at woman as her owner. The partnership of several persons in a property and all getting profit from that one property, is one of the laws in force in all human societies regarding property. If man looked on woman as his property, he would have allowed partnership in her, as he has allowed partnership in the ownership of property and the participation of its profits. Where in the world is there a system where property cannot have more than one owner, so that we can consider it the basis of the law of a single husband?

They say: "As man is one and woman is one, it is necessary that they should have equal rights. Why should a man benefit from the rights of polygyny while woman cannot enjoy the right to polyandry?" I say that it is here that you are mistaken. You have imagined that polygyny is the part of the rights of man, and that polyandry is a part of the rights of woman while, as a matter of fact, polygyny is part of the rights of women, and polyandry is neither part of the rights of men nor part of the rights of women. It is against the interest and advantage of man as well as against the interest and advantage of woman. We shall hereafter prove that the law regarding polygyny in Islam was created with the object of reviving and vindicating the rights of women. If the

intention were to put man in a favourable position, Islam would have done the same as the western world has done. To man it would have given the right to use and enjoy other women along with the first one, but would not have accepted any commitment or undertaking from the man as regards the interests of the woman and the children as his legal wife and his legal children.

Polyandry was not in the interests of woman, and so it cannot be said that one of her rights has been forfeited.

They say they want to impress upon men that their (men's) ideas regarding woman are not "based upon a secure and unassailable foundation, as men mistakably imagine." Accidentally, it is just what we want. We shall explain the basis of the Islamic viewpoint regarding polygyny. We earnestly implore this writer and every reasonable person to examine and consider whether the Islamic view rests upon a firm and unassailable footing or not. I declare on my word of honour that if anyone can point to a loophole in the foundation of the Islamic view in the problem under discussion, I shall discard everything I have said concerning the rights of women.

* * *

THE HISTORICAL CAUSES OF POLYGYNY (2)

Sensuality and the indisputable domination of man can-not, by themselves, be enough to bring into being the custom of polygyny. Certainly other causes and factors must also have contributed to establishing it as a regular custom, because there is an easier and less troublesome way available to the sensuous man for satisfying his fondness for change. He could have his favourite woman as a girl friend or mistress without entering into an engagement with her as a wife and without involving himself in any responsibility regarding her and regarding her children of uncertain parentage. Thus, in communities in which there is ordinarily a practice of marrying several wives, either there are moral and social checks on being openly given to lewdness and prostitution, and a sensuous man is obliged to pay the price for his passion for variety by accepting his favourite woman as his legal spouse along with the responsibility of fatherhood of her children, or in other cases we may suppose that there are some other causes, geographical, economic or social, other than sensual ones, and other than the fondness for variety.

Geographical factors :

Montesquieu and Gustave le Bon insist a lot on attributing polygyny to geographical factors. These thinkers believe that the climate of the east necessitates the custom of polygyny. Woman in the east attains puberty earlier and becomes old sooner, and because of this, man feels in need of a second and third wife. Besides that, a man brought up in the climate of the east is in such a state of sexual vitality that one woman cannot satisfy him.

Gustave le Bon writes: “Polygyny is simply the consequence of the climate, of race and the various conditions of existence particular to the Orientals.

"The influence of climate and race is too obvious for it to need being emphasized. The physiological constitution of the (oriental) woman, the necessity of child-bearing, her sicknesses, etc., force her to remain often at a distance from her husband, and since this momentary widowhood is impossible in the climate of the Orient and with the temperament of the Orientals, polygamy is absolutely necessary." *(La Civilization des Arabes,* p.422)

On pages 270 — 271 of *The Spirit of Laws,* Montesquieu writes : "Women, in hot climates, are marriageable at eight, nine, or ten years of age, thus, in those countries, infancy and marriage generally go together. (Prideaux, in his *Life of Mahomet* says : 'Mahomet married Cadhisja (sic) [Khadījah] at five, and took her to his bed at eight years old.') They are old at twenty: their reason therefore never accompanies their beauty. When beauty demands empire, the want of reason forbids the claim; when reason is obtained, beauty is. no more . . . In temperate climates, where the charms of women are best preserved, where they arrive later at a more advanced season of life, the old age of their husbands in some degree follows theirs; and as they have more reason and knowledge at the time of marriage, if it be only on account of their having continued longer in life, it must naturally introduce a kind of equality between the two sexes, and, in consequence of this, the law of having only one wife .. .

"Thus the law which permits only one wife is physically conformable to the climate of Europe and not to that of Asia."

This explanation is by no means correct. Firstly, the custom of polygyny is not confined to the warm regions of the East. In Iran, in spite of its having a temperate climate, there was polygyny in the pre-Islamic period. The observation of Montesquien that in tropical countries women get old at the age of twenty years is a pure exaggeration. All the more extravagant is the statement which he makes, citing that the Prophet of Islam married Khadījah when she was five years of age and that the marriage was consummated when she was eight years old, while it is a well-known fact that the

Prophet of Islam married Khadījah in his twenty-fifth year and that at that time she was forty years of age.

Secondly, if it is true that eastern women get old earlier, and that the excitement of men's passions is the real cause of polygyny, why did the men of the east not have recourse to the same way of life which western men of the Middle Ages and the present time adopted? Why, instead of having several wives, did they not succumb to the western pattern of free love, promiscuity and licentiousness? For, according to Gustave le Bon, the custom of monogamy in western countries is a mere farce and a hollow formality which is inscribed only in law books, whereas in actual social life there is no trace of it.

Again, according to him, polygyny has existed in the orient in a legal form, that is, an acceptance of a marriage contract with woman and of paternal responsibility for her children, while in the west it has had a hypocritical and illegal form, in the form of indulging in intimate associations with girl-friends and lovers without entering into a marriage contract with the woman, and without having any responsibility as a father for her children.

The form of polygyny in western countries :

I think it necessary at this stage to give a brief account of the manner of polygyny according to the western pattern in the Middle Ages in the words of one of the eminent western historians. This is simply so that my worthy readers, and all those persons who find fault with the east in the name of polygyny, and who occasionally censure the east for the keeping of harems, and consider these aspects of eastern life to be a source of disgrace before occidentals, should know that whatever existed and happened in the east, with all its evils and shameful aspects, is a thousand times preferable to what took place in the west.

Will Durant, in the 17th volume of his *The Story of Civilization,* has written a section on the decline of morals. He has

given an account of the general condition of morals in Italy during the Renaissance. The whole of this section, which is divided into eleven chapters, is worth reading. I quote a summary of what he has written under the heading of "Sexual Morality"

Firstly he gives a brief introduction containing certain items. For example, he wishes beforehand to tender an apology.

To begin with he says: "Turning now to laic morals, and beginning with the relations of the sexes, we should remind ourselves at the outset that man is by nature polygamous, and that only the strongest moral sanctions, a helpful degree of poverty and hard work, and uninterrupted wifely supervision, can induce him to monogamy.

"It is not clear that adultery was less popular in the Middle Ages than in the Renaissance. And as medieval adultery was tempered with chivalry, so in the Renaissance it was softened, in the lettered classes, by an idealization of the refinement and spiritual charms of the educated woman. .. Girls of good family were kept in relative seclusion from men not of their own household. They were sedulously instructed in the advantages of premarital chastity; sometimes with such success that we hear of a young woman drowning herself after being raped. She was doubtless exceptional, for a bishop proposed to raise a statue to her.

"Nevertheless there must have been considerable premarital adventure; otherwise it would be difficult to account for the extra-ordinary number of bastards to be found in any city of Renaissance Italy. Not to have bastards was a distinction; to have them was no serious disgrace; the man, on marrying, usually persuaded his wife to let his illegitimate progeny join the household and be brought up with her own children. To be a bastard was no great disability; the social stigma involved was almost negligible; legitimating could be obtained by lubricating an ecclesiastical hand. In default of legitimate and competent heirs bastard sons could succeed to an estate, even to a throne, as

Ferrante I succeeded Alfonso I at Naples, and as Leonello d' Este succeeded Niccolo III at Ferrara. When Pius H came to Ferrara in 1459 he was received by seven princes, all illegitimate. The rivalry of bastards with legitimate sons was a rich source of Renaissance violence.

"As for homosexuality, it became almost an obligatory part of the Greek revival. . . San Bernardino found so much of it in Naples that he threatened the city with the fate of Sodom and Gomorrah. Aretino described the aberration as quite popular in Rome. We may say likewise of prostitution. According to Infessura — who liked to load his statistics against papal Rome — there were 6,800 registered prostitutes in Rome in 1490, not counting clandestine practitioners, in a population of some 90,000. In Venice the census of 1509 reported 11,654 prostitutes in a population of some 300,000. In the fifteenth century a daughter unmarried at fifteen was a family disgrace; in the sixteenth century the age of disgrace was deferred to seventeen, to allow time for higher education. Men, who enjoyed all the privileges and facilities of promiscuity, could be lured into marriage only by brides bringing substantial dowries. In the Medieval theory of marriage it was expected that love would develop between man and wife through the varied partnerships of marriage in joy and sorrow, prosperity and adversity; and apparently the expectation was fulfilled in the majority of cases. Nevertheless adultery was rampant. Since most marriages among the upper classes were diplomatic unions of economic or political interests, many husbands felt warranted in having a mistress; and the wife, though she might mourn, usually closed her eyes — or her lips — to the offence.

"Among the middle classes some men assumed that adultery was a legitimate diversion; Machiavelli and his friends seem to have thought nothing of exchanging notes about their infidelities. When, in such cases, the wife avenged herself by imitation, the husband was as like as not to ignore it, and wear his horns with grace."

Yes. This was a specimen of the life of the men who always condemned polygyny as the unforgivable sin of the Orient, and occasionally put the blame of this so-called inhuman conduct on the climate of the Orient, whereas their own climate in no way allowed them to be unfaithful to their wives or to transgress the limits of monogamy.

By the way, the point should also be made that the fact that there was no custom of polygyny in its lawful form among Occidentals, whether it be good or bad, had no relation with the religion of Christianity. In the original Christian religion, there is no commandment forbidding polygyny, rather the matter is just the reverse. For it is an admitted fact that Christ confirmed the Mosaic Law, and in Mosaic Law polygyny is formally recognized. Thus we may say that in the original Christian religion, polygyny was permissible, and that is why the ancient Christians had several wives. So the abstention of Occidentals from polygyny must have some other cause or causes apart from religion and its laws.

Menstruation :

Some others have attributed polygyny to the monthly period of woman, and her inability to have sexual intercourse during that period, and also to her exhaustion after child-bearing, her abstention from the sexual side of life, and her involvement in the feeding and upbringing of her children.

Will Durant says: “Also, men like youth in their mates, and women age rapidly in primitive communities. The women themselves often favoured polygamy; it permitted them to nurse their children longer, and therefore to reduce the frequency of motherhood without interfering with the erotic and philoprogenitive inclinations of the male. Sometimes the first wife, burdened with toil, helped her husband to secure an additional wife, so that her burden might be shared, and additional children might raise the productive power and the wealth of the family.”

Without any doubt, the monthly period of woman, as also her exhaustion from child-birth, puts her and man in different sexual states, and brings about a situation where man is more or less inclined to look for some other woman. But neither of the above two factors can by itself be a cause of polygyny unless there is actually some moral or social obstacle restraining the man from gratifying his passions by having free recourse to mistresses and lovers. So the above two factors were effective when-ever there were such circumstances that prevented man from having complete freedom in licentiousness.

The child-bearing period of woman is limited:

Some people think that the fact that there is a limit to a woman's, as opposed to a man's, reproductive years, that is the event of the menopause, is one of the causes of polygyny. In certain cases a woman may have reached that age without having borne sufficient children, or after the elder children had died.

The wish of a man to have children, and his disinclination to divorce his first wife, is then the cause of. his marrying a second or a third wife, just as the barrenness of the first wife is another cause for him to go on to marry a second wife.

Economic factors :

Economic causes have also be suggested for polygyny. It is said that in ancient times, contrary to the present day, havin6 numerous wives and plenty of children was economically beneficial for man. Man used to set his wives and children to work like slaves, and occasionally used to sell his children. The source of the slavery of many persons was not their being captured during wars; their fathers had brought them to the markets and had sold them.

This thing may have been as a cause of polygyny because a man, by merely acknowledging a woman as his formal wife, could benefit from having many children. Prostitution and free love could not

give man these advantages. Nevertheless, as we know, it cannot be generalised to all cases in which polygyny is practised.

Let us suppose that primitive communities had polygyny for this purpose; even then not all communities have been like this. In the ancient world polygyny was common in those classes of society that had luxurious and splendid life-styles, and generally kings, princes, aristocrats, priests and merchants kept several wives. Obviously this strata of society never used to make any economic gain from their numerous wives and their large number of children.

Factor of number and tribe :

The interest in having children in large numbers, and any addition to the number of family members, was, in itself, another factor which contributed to the causes of polygyny. One of the things which puts woman and man in different situations is that the number of children a woman can bear is very limited, whether she has one husband or more, but the number of children that a man can beget, depends upon the number of women that he has under his control. It is possible for a man to beget thousands of children by hundreds of wives.

In the ancient world, unlike the present, number and tribe were regarded as important social factors. Tribes and communities used to try by every means to add to their numbers and to put a check upon all those elements which restricted any addition to their numbers. One source of pride for them was the large number of their tribe. Obviously polygyny could be the only source of the abundance in their numbers.

There are more women than men:

The last and the most important of all the factors has been the excess of the number of women over the number of men.

The births of female children have not been and are not any more than those of male children. If it happens that in some lands the births of female children are in excess of those of male children, in other lands it is the reverse and the births of male children are more. The thing which always causes the number of marriageable women to be more than the number of marriageable men, is that the deaths of men have always been and still are more than those of women. The excess of the deaths of men has always been and still is the cause of a large number of women in monogamous societies remaining deprived of lawful husbands, homes, lives and lawful children.

There is no dispute about the fact that it was so in primitive societies. We previously quoted Will Durant who said that, "In early society, because of hunting and war, the life of the male is more violent and dangerous, and the death rate of men is higher, than that of women. The consequent excess of women compels a choice between polgamy and the barren celibacy of a minority of women."

An analysis :

The causes that can be supposed to have been historically effective in initiating polygyny are no more than those that have been recounted above. Nevertheless, as already observed, some of these causes are not actually causes, and have been put down for no good reason as the causes of polygyny : as, for example, the climate. After disposing of this one, we come across three kinds of causes. In the first kind there is some effect from marrying a number of wives, but no justification is put forward for the man to act in this way; it only stems from his force, cruelty and tyranny. The economic cause mentioned before is in this class.

Obviously the selling of children is one of the most savage and most cruel of human activities, and polygyny for this hideously criminal purpose is as detestable as the act itself.

The second category containing those causes that are connected with rights is worth careful attention and may be reckoned as justifiable for man and society: such as when the wife happens to be barren or is too old, and the husband wants children, or it may be in the interest of the tribe or the country to increase its population. As a general rule natural causes, when, for example, the husband and the wife are put in different situations concerning the satisfaction of sexual urges or as regards having children, justify polygyny because of their connection with rights.

However, among the causes detailed previously, there is the third kind which, if we suppose that it existed in the past or exists in the present day world, is more important in itself in justifying man or society in resorting to polygyny. Not only that, but it creates a right in favour of woman and a duty and responsibility for man and society. That cause is the excess of the number of women as compared with men. If we suppose that in the past, or at present, the number of women fit to be married is in excess of the number of men fit to be married, and that monogamy is the only lawful form of marriage, a group of women would be left without husbands and would remain deprived of any kind of family life. In that case polygyny should be considered the 'right' of deprived women and the 'responsibility' of men and married women.

The right of marriage is the most natural human right. No person should be deprived of this right on any pretext or an any grounds. The right of marriage is a right which every individual can claim from his or her society. A society cannot do anything to deprive a group of this right.

Just in the same way as the right to work, the right to food, the right to a dwelling, the right to education and instruction, and the right to liberty are counted as the part of basic and fundamental rights of a human being and an individual cannot for any reason and on any ground be deprived of those rights, so the right to marry is also a natural right. If the number of women fit to marri-

ed exceeds the number of marriageable men, the law restricting marriage to monogamy will be inconsistent with this natural right. So this law would be antagonistic to fundamental and natural human rights.

* * * *

These things concern the past. What is to be said in respect of the present ? Do the causes justifying polygyny which can give it official recognition as a right exist at the present time or not? Suppose these causes at present exist, then what is to be said concerning the rights of women in the past? In the coming chapters replies to these questions will be given.

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THE RIGHT OF WOMAN IN POLYGYNY

We have given an account of the decline of the custom of polyandry and of the general acceptance of the custom of polygyny. We elucidated various causes that have contributed to bringing about the custom of polygyny. Some of those causes, no doubt, have their root in the dominating and despotic mentality of the male sex, and some have their origin in the difference of the natural dispositions of woman and man in producing children, and in woman's capability to produce the number of children desired. This may be regarded, in certain circumstances, a justification for man to have more than one wife. Nevertheless, the state of affairs which has always been mainly effective through-out history, due to which polygyny is rendered a woman's right and the performance of a duty by man, is the comparative excess in the number of women fit to be married as compared to men in a similar situation.

For the sake of brevity, we shall abstain from going into the details and recounting the causes which may be considered sufficient justification for man in marrying several wives. We shall confine our discussion to one cause which, if it really exists, would make polygyny the right of the woman.

In establishing this point two premises ought to be made clear. One of them is that according to quite certain and indisputable statistics, the number of women fit to be married exceeds the number of men in the same situation. The other one is that if this state of affairs is a fact, it creates a right in favour of the left - out and the deprived women which can be claimed from men and married women, because of human rights.

Now as regards the first premise, fortunately relatively exact statistics on this subject are available in the world today. All the countries of the world, every few years, count their in-habitants and collect statistics relating to them. In these census reports, which, in advanced countries, are prepared with minute precision,

not only are the figures for the male and female sexes available, but the comparative number of each sex in different age-groups is noted down. For example, in these reports it is clearly mentioned that the number of the men in the twenty to twenty-four year age-group is this much, and the number of women in the twenty to twenty-four year age-group is this much, and in like fashion the comparative numbers of all age-groups are mentioned. The United Nations Organization, in its annual population studies, continuously publishes these statistics, and till now there have probably been sixteen issues.

The latest publication to date is for the year 1964, which was issued in 1965.

We should, of course, keep in mind one point from the very start; that, for our purposes, it is not sufficient to know what is the total number of members of the male sex in a particular country and what is the number of females in that country. What serves our purpose and what is necessary to know is the comparative proportion in the number of males and females of marriageable age. Mostly the proportion of the number of men and women of marriageable age is different from the proportion of the total number of men and women. This is for two reasons. One reason is that the time of puberty for girls is earlier than it is for the boys. It is for this reason that generally all over the world the legal marriageable age for the girls is lower than it is for boys, and almost invariably marriages between men and women all over the world take place while the man is, on the average, five years older than the woman.

The other cause which is more fundamental and more important is that in spite of the fact that births of girls are no more in number than births of boys, and occasionally in some countries births of boys exceed births of girls, deaths in the male sex occur sooner than deaths among females, and so, on reaching marriage-able age, that harmony is disturbed and upset. Sometimes that difference is plainly evident and the number of women of marriage-

able age largely exceeds the number of men of marriageable age. So it is possible that the total number of males in a country may be the same as the females, or may be more, but in the category which has reached the legal age of marriage, the position may be the reverse.

This position is fully clear from the latest issue of the population statistics of the U. N. O. for the year 1964.

For example, according to the statistics detailed in that issue the total population of the Republic of Korea is 26,277,635 and out of them 13,145,289 are male and 13,132,346 are female. Thus in the total population the number of males is more than the number of females by 12,943. This proportion in children below one year of age, and in children from one year to four years, from five years to nine years, from twelve to fourteen years and from fifteen to nineteen years of age has been uniformly maintained.

Statistics show that in all these age-groups the number of males is more than the number of females. Nevertheless, from twenty to twenty-four years of age this proportion is changed. The total number of males in this age-group is 1,083,364 and the total number of females is 1,110,051. From this age-group where the legal age of marriage for males and females occurs, as we go upwards, the number of females is higher than the number of males.

Moreover, the Korean Republic is in an exceptional position in that in the total population the number of men exceeds the number of women. In almost all other countries, and not only in the years of marriage, the number of females is more than that of males; in the total population also the number of females is more than that of males. For example, in the Soviet Republic the total population is 216,101,000 and out of them 97,840,000 are males and 118,261,000 are females. This difference exists before the age of marriage, and it is likewise seen in the marriageable years,

that is, in the twenty to twenty-four year age-group, and in the twenty-five to twenty-nine year, the thirty to thirty-four year and the eighty to eighty-four year age-groups.

Similarly, in England, France, East and West Germany, Czechoslavakia, Poland, Rumania, Hungary, America, Japan, and so forth. However, in certain areas such as East and West Berlin the difference in the number of women and men is more, conspicuous.

In India, even in the marriageable age, the number of men exceeds the number of women. It is only from fifty years upwards that the number of women exceeds the number of men. Perhaps the cause of the shortage in the number of women in India is the old habit of the superstitious people of that country who burn women whose husbands have died.

The latest census which was made in Iran showed that Iran is one of those exceptional countries where in the total population, the number of males is higher than the number of females. The total population of Iran, according to that census is 25, 780, 910 and out of those 13,337,334 are males and 12,443,576 are females, so in all males are in excess of the number of females by 893,758.

I remember that some of the authors who used to take exception to polygyny in their writings took this factor of the comparative population of males and females in Iran as a part of their evidence and used it as an argument against those writers who wrote in support of polygyny. In this way, they adduced that the law of polygyny should be annulled.

I was all the time surprised and distressed by the writings of these people, and wondered why they had not understood, first of all, that the law of polygyny is not confined to Iran, and that secondly, what is important in connection with this subject is that we should know for certain whether the number of men

fit to be married is really at par with the number of women of marriageable age, or whether it is more. The fact that the total number of males is greater than the total number of females is not by itself sufficient as far as the subject under consideration is concerned. We saw that in the Republic of Korea, and also in certain other countries, the total number of males is greater than that of females, but that amongst persons able to marry the number of females is higher than the number of males. Leaving alone the fact that in countries like Iran these census figures are not so very dependable, we should keep in mind the common partiality of Iranian women to pose as having given birth to a son to the extent that even in reply to census officials they would not be ready to declare that they had given birth to a daughter. Thus they see that a son is recorded instead of a daughter. This one thing in itself is sufficient to reduce our trust in these figures. The practical matter of supply and demand in our country is a sufficient proof of the fact that the number of women fit to be married is greater than the number of men. The reason for this is that, in this country, although polygyny was and still is practised from the cities to the villages and even among the tribal people, yet nobody has felt the shortage of woman and woman has not found a place on the black market. On the contrary the supply has always exceeded the demand. Girls or widows or young women who have been left without husbands by the force of circumstances have always been far in excess of unmarried young men. A man, however penniless or ugly, if he wants to get married, need never be disappointed, for there are many women who have been compulsorily left unmarried. These are every day observations which are more telling and more certain than any statistics.

Ashley Montague, in his book *The Natural Superiority of Women,* while vainly attempting to explain that the strong inclination of women towards beautification and elegance arises from self display in public, affirms the fact of the greater number of women. He says, “All over the world the total number of women fit to be married taken together exceeds the number of men.

"The 1950 census showed that the number of women fit to be married in the United States of America exceeded the number of men by one million three thousand four hundred."

Bertrand Russell in his book *Marriage and Morals* in the chapter concerning population writes: "There are in England some two million more women than men, and these are condemned by law and custom to remain childless, which is undoubtedly to many of them a great deprivation."

A few years back we read in the Iranian newspapers that the enormous number of unmarried German women who, as a result of the great number of casualties among Germans in the Second World War, were deprived of having legal husbands and a family life, formally applied to their Government to annul the law of monogamy and to allow polygyny. The German Government, on the basis of this one formal application, asked the Islamic University of al-Azhar to provide them with a formula to implement this. We gathered information afterwards that the Church had emphatically opposed this step. The Church preferred that women be deprived and that promiscuity .should actually increase rather than that there should be polygyny, only because it was an Oriental and Islamic formula.

Causes of the excess of the number of women fit to be married over the number of men :

What is the cause of this? In view of the fact that birth§ of girls are no more in number than births of boys, why should the number of women fit to be married be more than that of men?

The cause of this thing is evident; deaths among the male sex are more than deaths among females. These deaths happen, generally, in those years in which man, if he were alive, might have been the guardian of a family. If, for a while, we think over the casualties that occur due to wars, drawings, falls, burials under

debris, collisions, etc., we shall see that most of these accidents and casualties are met with by men. Woman is rarely seen amidst these happenings. It may be a struggle of mankind against mankind, or a contest against nature but it is mostly men who meet with the casualties. If we only take war into consideration, we will see that from the beginning of human history there has not been a single day without warfare at several places in the world — and when man has not been a victim of mortality. This one thing is sufficient for us to understand why the balance of men and women of marriageable years is disturbed.

The total number of casualties in wars in the industrial age is hundreds of times greater than in the age of hunting and agriculture. The deaths among the male sex which occurred in the last two World Wars reached seventy million. This number is equal to the deaths among mankind as the result of war in the last few centuries. If you only keep in mind the wars that were going on a few years ago, and the wars that are still going on in the Far East, the Middle East and Africa, you will agree with us.

Will Durant says: "A number of factors have been effective in the decline of this custom (polygyny) . An agricultural existence has an element of constancy in it. This kind of life lessened the hardships and discomforts to man. The dangers of life decreased and this was the cause for the number of men and women becoming almost equal."*

This is a very strange thing that Will Durant has said. If the loss of life of men depended exclusively upon his encountering natural forces, then of course there might be a difference between the hunting age and the settled agricultural age. Nevertheless, the main cause of casualties among the male sex is war, and that was by no means less in the agricultural age than in the hunting age. Besides that, there is another cause of this thing. Man has always

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* Translated from the Persian, original untraced. (tr.)

taken woman under his protection, and undertaken himself to do the hard, difficult and hazardous tasks in which there was a danger of death. So this disproportion was maintained in the agricultural age just as in the hunting age.

Will Durant, does not make any mention of the machine and industrial age, while this period has created havoc in the life of men and the imbalance has become all the more glaring and obvious.

Women have more resistance to disease :

Another thing which is the cause of more deaths among the male sex than the female sex is an important factor which has recently been discovered as a result of the advances of science.

In 1956, the newspaper *Iṭilã‘ãt* reported: “The French Office of statistics reports that although births of male children exceed births of female children, and although as against every hundred girls a hundred and five boys are born, yet the number of women is greater by one million five thousand and seventy-six than men. They attribute this difference to the resistance of the female sex against disease.”

In the magazine *Sukhan* (year 6; no.11), an article under the title “Woman in Politics and Society”, originally published in the illustrated monthly magazine of UNESCO, was translated by Dr. Zahra Khanlari. In that article it was quoted from Ashley Montagu that the nature of woman is scientifically superior to the nature of man. The X-chromosome, which is related to the female sex, is stronger than the Y- chromosome, which is related to the male sex. As a result, the age of woman is longer than the age of man. The average age of woman is greater than that of man. Woman is generally healthier than man. Her power of resistance against many diseases is greater. She mostly recovers sooner. For every stammering woman five stammering men are seen. For every colour — blind woman sixteen colour — blind men are found.

The tendency to haemorrhage is almost particular to males. Woman has more stamina in duress. During the last war, it was everywhere confirmed that, in the same conditions, women fared better during the hardships of a siege, a prison or a concentration camp. In almost all countries the incidence of suicide among men is three times that among women.

The view of Ashley Montagu concerning the greater resistance of the female sex against diseases was at a later period translated by Ḥusãmu ‘d-Dīn Imãmī from a part of the book *The Natural Superiority of Women* and was published in the 70th issue of *Zan-e rũz*.

The power of resistance of woman against disease may be the cause of a situation in which some day man may seek authority to take his vengeance on the female sex, to drag her to the hard and hazardous tasks in which there is a danger of death and destruction, especially to take her to the battlefield, and make her elegant body the target of shells, machine-guns and bombs, and to give her a taste of these activities. Even then, because of the greater power of resistance against disease, the balance of the number of men and women will not be disturbed. All this is in connection with the first issue, that is, the comparative excess of women fit to be married over men in a similar position. Thus it has become clear that this is a true situation as is its cause, and that the cause or causes have been and still are in existence from the very beginning of human history to this day.

Right of woman in polygyny :

As for the second issue, namely that the excess in the number of women fit to be married over the number of men creates a right in favour of the woman and a duty for men and married women, in so far as the right of marriage is concerned it is one of the most natural and the most basic right of human beings. This is something that cannot be argued. Every individual, man or woman, has the right to a family life, and should have their

share of comfort in having a wife, or a husband, and children. Everyone has this right, just as he has the right to work, to have a dwelling, to profit from education and training, and from proper sanitation, and to have security and freedom.

Society should not only not create obstacles to the vindication of these rights, it should, instead, provide facilities for securing these rights.

In our opinion a serious deficiency in the Universal Declaration of Human Rights is that it did not pay any attention to the right of marriage. This Declaration endorses rights like the right of liberty and security, the right to seek effective redress from national tribunals, the right to acquire and to give up nationality, the right to marry a person of any race and religion, the right of ownership, the right to form unions, the right to rest and leisure, the right of instruction and education. However, as for the right of marriage, that is, about the right to have a lawful familial home, not a word is said. This right is all the more important for a woman, because a woman is more in need of family life. In a previous section we said that for man marriage is more important for its material aspect and for woman it is more important in view of its spiritual and emotional aspect. If a man abandons family life, he can, by indulging in love affairs and by having girl-friends, satisfy at least half of his needs, but for a woman the importance of family life is more than just these things. If a woman, gives up the environment of the family, she cannot, by indulging herself in promiscuity and love affairs, by any means satisfy, even to the slightest extent, her material or spiritual needs.

The right of marriage for a man means the right to satisfy an instinct, the right to have a wife, a partner, a trustworthy companion, and the right to have lawful children, but for a woman the right of marriage means, besides all these things, the right to have a protector, a patron, a dependable man to look after her feelings.

Now, after these two introductory remarks:

1. The comparative excess of the number of women over the number of men,
2. The right of marriage is a natural human right,

we can derive the result that if monogamy is the only legal form of marriage, a large group of women will be, in practice, deprived of their natural human right (the right to marriage). It is only by the provision of the law of polygyny (of course with special conditions) that this natural right is revived.

It is thus the job of enlightened Muslim women to realize their real individuality and, in the name of just rights, in the name of morals, in the name of the most natural human right, to propose to the Commission of Human Rights of the United Nations Organization that polygyny, with all the logical conditions which Islam has ordained, should be formally acknowledged. Thus the U. N. O. would do the greatest service to the female sex and to morality. But it should not be considered a sin for a formula to be presented by the Orient and accepted by the West.

Russell's view :

Bertrand Russell, as we pointed out before, is aware to this point, that if monogamy is the only lawful form of marriage, it necessarily results in the deprivation of a large group of women. So, in *Marriage and Morals,* he proposes a solution. A wonderful solution indeed! The very simple and very easy way he puts for-ward that is this. The excess women should be allowed to hunt out men and bear fatherless children so that they may not re-main deprived of having offspring. In view of the fact that a woman, when she bears a child in her womb, or during its infancy, is in need of material help, usually the father of the child, by means of maintenance, helps her. In the position suggested, the State would function as a substitute for the father and would give material assistance to her. After saying this:

"There are in England some two million more women than men, and these are condemned by law and custom to remain childless which is undoubtedly to many of them a great deprivation.", he goes on to say: "Strict monogamy is based on the assumption that the number of the sexes will be approximately equal. Where this is not the case, it involves considerable cruelty to those whom arithmetic compels to remain single. And where there is reason to desire an increase in the birth-rate, this cruelty may be publicly as well as privately undesirable."

This is the solution which a philosopher of the 20th century proposes for this social problem and it is the solution which Islam proposed before. Islam says: "Solve this problem in this way, that one man possessing the necessary financial, moral and physical abilities should undertake to maintain more than one woman. He should give the second woman the position of his religiously lawful wife. He must not think of discrimination and difference between her and his first wife, neither between her children and the children of his first wife. The first wife, in the spirit of social duty, should, for the sake of her sister, make sacrifices. She should willingly agree to this kind of sharing and socialism which is the most immediate form of socialism." This twentieth-century philosopher, on the other hand, says that the deprived women should steal the husbands of the other women, and that the fatherless children who thus come into existence should be maintained by the State. The view of this modern philosopher seems to be that a woman is in need of marriage only to three ends. One of them is the sexual urge and that can be satisfied by means of a display of beauty and charm. The other concerns having children, and that too can be secured at the same time by the way of stealing. The third objective is financial, and that should be given by the State. In the view of this celebrated English philosopher, among those things which have no importance, one is that woman is in need of the sincere affection of her husband, and requires that her husband should take her under his protection, and that his attachment to her should not be only for the sexual matters in life. The other thing

which in the eyes of this philosopher is of no consequence is the disturbed and unpleasant position of the child who is born into this world under these conditions. Every child, rather every human being needs to be known to the father and known to the mother. Every child is in need of the sincere love of the parents. Experience has shown that the mother of an illegitimate child who has not had enough loving attention from the father of that child, very seldom has love for that child. Whence would this deficit in the affections of love be provided and made up? Can the State fill up this gap?

Lord Russell is anxious that if his proposal is not made a law a large group of women will remain childless. Nevertheless, Lord Russell himself knows very well that the unmarried women of England do not have the patience to wait for that. They have, on their own, solved the difficult problem of being left unmarried, and have also created the problem of fatherless children.

One in every ten English children .. .

In the newspaper *Iṭilã'ãt* in December 1959 an article en-titled: 'Out of every ten British children, one is a bastard' appeared. "London-Reuters 16th December — A.F.P. — In the report which Dr. Z.A. Scott, a Medical Officer of the city of London, presented, it was noted that in London last year, out of every ten children born, one was illegitimate. Dr. Scott has emphasized that the number of illegitimate births is continually rising, and from 33,838 births in 1957 it rose to 53,433 in the following year."

Without waiting for Lord Russell's proposal to be made an Act of Parliament, the British nation has solved the problem themselves.

Polygyny is prohibited while homosexuality is lawful !

However, the British government took steps exactly in the direction opposite to the view of Lord Russell. Instead of proceeding to determine the proper course for alleviating the deprivations of unmarried women, they formally acknowledged the rivalry of the male sex against them and deprived them more than before of the male sex. They did it by way of enacting the law of homosexuality. In duly 1961, the newspaper *Iṭilã'ãt* gave the news in these words: "London — After an eight hours' debate, the British House of Commons passed the Homosexual Act and sent the Bill to the House of Lords for approval."

After ten days the above-mentioned newspaper wrote: "The House of Lords has passed the Homosexual Act at its second reading. This Bill, which was sent for approval by the Parliament, shall soon receive the Royal Assent of Queen Elizabeth II of England."

In England at present polygyny is illegal and forbidden, but homosexuality is permitted and is lawful.

In the eyes of these people if a man brings in a rival for his wife from the female sex, it is forbidden and is considered to be an inhuman act, but if he brings a rival for his wife from the male sex, it is an honourable and human act and is proper and befits the exigencies of the twentieth century. In other words, in view of those in power in Britain, if a wife's rival has a beard and moustache there is no harm in polygyny. It is said by some of our people that the Western world has found a solution for sexual and family problems, and that we should make use of the ways that they have adopted in solving these problems. Now, the Western world has found a solution in a way that you have seen.

The way that the West has paved out for themselves with regard to sexual and family matters, could have led them only to these consequences and to no other. If they had reached some other result, it would have been a matter for surprise.

The thing which gives me much surprise and regret is why our men should have given up their ability to think. Why should the young and educated persons of the present day have less ability to analyse and evaluate statements? Why should they have lost their own identities? Why is it that when they have a precious jewel in their hand, and men on the other side of the world say that it is a walnut, they believe them, and throw it away, but that when there is a walnut in the hand of a foreigner, and it is said to be a jewel, they become envious of it.

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IS IT THE NATURE OF MAN TO BE POLYGYNOUS?

You are bound to be astonished to hear that psychologists and sociologists in the west generally believe that man is a born polygynist, and that monogamy is against his nature.

On page 80 of his *The Pleasures of Philosophy,* after commenting on the moral confusions of today with regard to sexual matters, Will Durant says: "Some of it (i.e., the increase in 'social evil'), doubtless, is to be accounted for by our incorrigible love of variety; nature does not build us for monogamy."

He also says: "Man is naturally disposed towards having numerous wives. Only the most scrupulous moral susceptibilities, and the balancing of the scales due to poverty, hard labour and the constant vigil of the wife imposes monogamy upon him."*

In the 112th issue of *Zan-e rũz* under the heading, "Is Man Innately Promiscuous? ". A German, Professor Schmidt, is quoted as saying : "Throughout history, man has always been promiscuous and woman a guard against promiscuity. Even in medieval times, according to the existing testimony, ninety per cent of young men used to occasionally change their wives and fifty per cent of married men committed some breach of trust against their wives. Dr. Robert Kinsey, the well-known American researcher, in his report known as the *Kinsey Report,* has written: 'The men and women of America have beaten all the nations of the world in faithlessness and breach of trust. . .' Kinsey, under another heading in the report says: 'Woman, unlike man, is bored by seeking variety in love affairs and pleasure, and this is the reason why woman is at a loss to understand what to do about the behaviour of man.' Nevertheless, man treats the business of looking for variety as a sort of adventure. He easily deviates from the right path, and, if there is

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* *ibid.,* translated from the Persian, original untraced. (*tr.*)

one thing which is important for him, then it is physical gratification and not emotional or spiritual enjoyment. The display of a man's being emotionally and spiritually affected is only up to the time he gets an opportunity to get his physical pleasure. One day a well-known medical practitioner told me: 'That a man is a polygamist, and that a woman is a monogamist, is a self-evident proposition. The reason is that in man millions of spermatozoa are created, while in the woman, when she is ready to become pregnant there is no more than one seed in her ovary.' Leaving aside from Kinsey's theory, is there any harm if we ourselves think over the question of whether it is difficult for man to remain faithful?

"Henri de Montherlan of France in reply to this question writes: 'To be faithful is not difficult for man. It is, rather, impossible. One woman is created for one man and one man is created for life and for all women. If man helplessly stumbles and commits infidelities with his wife, it is not his fault, it is the fault of his creation and natural disposition that all the factors which cause a breach of faith have been brought together in him.' "

In the issue 120 of the same magazine, under the heading, 'Love and Marriage — French Style' the following is written: "The French husband and wife have settled the matter of unfaithfulness between themselves by conforming to certain rules of conduct, certain limits and restrictions in this respect. As long as the man does not transgress the limits of these rules of conduct, a leap into the dark is not a difficulty for him. Can a man, in principle, after two years of married life remain faithful? Certainly not, because it is against his nature. Nevertheless, with regard to women he discriminates, to a certain extent, between them, and, fortunately, they (the wives) are aware of this discrimination. In France if a husband commits an infidelity, his wife does not get annoyed or does not let it get on her nerves. She consoles herself: 'He took his body to someone and not his spirit and his sentiments. His sentiments and spirit are mine.' "

A few years back the views of a biology Professor, Dr. Russell Lee, were published in the newspaper *Kayhan* on the same topic, and for long they were discussed by the writers of Iran. Dr. Lee believed that the satisfaction of a man with one woman is an infidelity against reproduction, not as regards quantity but as regards quality. The reason is that limiting a man to one woman weakens his offspring. If he had numerous wives the generations would get stronger and more powerful.

We do not at all agree with this description of the nature of man. For these thinkers, the source of their inspiration is the special form of their social environment and not the real nature of man.

Of course, we do not believe man and woman to be biologically and psychologically the same as each other. Rather, we believe that they are in both respects dissimilar, and that creation has its own purpose in this dissimilarity. For this very reason identicalness of rights for man and woman, and the exact correspondence of the rights of one to the other should not be claimed. From the point of view of monogamy as well, man and woman have absolutely different mentalities. Woman is by nature a monogamist. Polyandry is incompatible with her natural tendency. The kind of things she desires from her husband does not fit in with polyandry. However, man is by disposition not a mongamist, in the sense that polygyny is not against his nature. Polygyny is not at variance with what he wishes and expects from a woman.

However, we do not agree with the belief that the natural disposition of man is at variance with monogamy. We are against the idea that the inclination of man towards variety is beyond reform. We are opposed to the belief that faithfulness is impossible for man, and that one woman is created for one man, and one man for all women.

We believe that the social environment brings into being the factors of infidelity in man, and not his creation and nature.

Creation is not responsible for unfaithfulness; it is the social environment. The factors of unfaithfulness are brought into being by the social environment, which, on the one hand, induces a woman to use all her tactics for temptation and attraction on a complete stranger, to use a thousand and one tricks for enchanting him, to divert man from his way, and which, on the other hand, deprives hundred of thousands of women, fit and in need of marriage, from getting married, and sends them out into society to tempt and seduce men on the excuse that the only legal form of marriage is monogamy.

Before the manners and customs of the West became widely received with approbation in the Muslim East, ninety men out of hundred were earnest monogamists. Neither had they more than one legal wife nor did they amuse themselves with concubines and loves. Exclusive marriages, in the real sense of the word, was in vogue in almost all Islamic families.

Polygyny is a source of protection for monogamy:

You will be surprised if I say that, in the Muslim East polygyny has been the foremost factor in the protection of monogamy. Yes, to be allowed to have more than one wife was the safety device of monogamy. This means that when there are conditions, where polygyny is justified where the number of women in need of marriage is above the number of marriageable men, and the right of marriage of these women is not formally recognized, and where those men who fulfil the moral, financial and physical conditions for marrying more than one wife are not permitted to marry another wife, devotion to loves and girl-friends withers the very root of real, genuine monogamy.

In the Muslim East, on the one hand, polygyny was permissible, while on the other hand, there were none of these tempting means to excitement, no stirring up of the emotions. This was the reason that in most families monogamy was the rule, and the love affairs of men did not reach such limits that eventually philosophies

would be devised in their support, and it should be said that man is created for numerous women, and monogamy is some-thing impossible and unattainable for man.

You may possibly ask what man is supposed to do in the view of the theory of those who think that man is naturally disposed to polygyny, and in view of the social law which condemns polygyny.

The proper course in the school of thought of these worthy thinkers is evident. Man should legally be a monogamist, but in practice a polygamist. He must not have more than one lawful wife, but, as for love affairs and mistresses, he may have any number he likes. There is no restrictions to this. According to these gentlemen love affairs and mistresses are the natural, in-disputable and lawful right of man, and to restrict man to one woman for life means a sort of impotency.

The real point at issue :

In my opinion, by now my worthy readers should have grasped what the problem really is; the problem of mankind's polygyny, that was and still is under study. The point at issue is not whether monogamy is better than polygyny. There is no dispute about the matter that monogamy is better. Monogamy which means an undisturbed, secure family life, in other words, that the body and soul of each, the husband and the wife, are one for each other. It is evident that the spirit of matrimonial life which is oneness and unity is attained better and with more perfection with a single spouse. One does not have to make a choice of one of two alternate routes on which to proceed. The problem that is to be tackled in earnest is that for social necessities, especially those due to an excess of the comparative number of women in need of marriage to the number of men in need of marriage, absolute and unrestricted monogamy is in practice at stake. For this reason, pure monogamy in each and every family is no more than a fiction. One of two alternatives should be chosen: either the formal acceptance

of polygyny, or the love affairs system. In other words, either a few married men should marry more than one wife, and these will certainly not exceed ten per cent, and unmarried women should settle, get a home and make a life for themselves; or else open the way for love affairs. In the latter case every lover may associate at her own free will with several men, and, as a result, almost all married men will in practice be polygamists.

Yes, this is the correct position as regards the problem of polygyny, but the missionaries of western life-styles are not prepared to pose the problem in its right perspective. They are not prepared to speak the truth out openly. They are actually defenders of prostitution and a promiscuous life. They consider their lawful wives to be irksome and a source of inconvenience, and they consider even one wife to be more than necessary, let alone two, three or four wives. They delight and feel great pleasure in being free from the bondage of marriage, but in their talk with simple persons they pretend to be defenders of monogamy, and, in an innocent tone, they say they advocate the cause of monogamy. "We want man to marry only one wife and to remain faithful to her and not to be a polygynist and unfaithful."

Twentieth - century man's fraudulence :

In many matters concerned with family rights twentieth-century man has been able to deceitfully misrepresent the facts, and, by deluding women with elegant expressions of equality and independence, he has evaded his responsibilities towards her and added to his own countless successes. Nevertheless, in few matters was he as successful to the degree he was in polygyny.

I sometimes see such things in the writings of the Iranian writers that I truly doubt whether it is due to simple - mindedness, or whether it is a deception.

One of the writers has put down his view about polygyny thus :

"At present, in the developed countries, the relations between husband and wife rest upon reciprocal rights and responsibilities, and so the recognition of polygyny in any form or manner (permanent or temporary) would be as difficult for a woman to accept as it would be to expect man to tolerate a rival in matrimonial affairs."

I do not know whether really the ideas of these people are the same concerning this matter, or whether they purposely misrepresent the facts. Do they really not know that polygyny rises from a social problem which rests heavily on the shoulders of all men and married women, and that for the solution of this difficulty something better than polygyny has not yet been found? Do they not know that if they shut their eyes and hold demonstrations, crying out 'Long live monogamy' and 'Death to polygyny', that this will not remedy the ailment.

Do they not know that polygyny is the right of women and not part of rights of men, and has no connection with the comparative rights of men and women?

How ridiculous it is when they say, "polygyny would be as difficult for a woman to accept as it would be to expect a man to tolerate a rival in matrimonial affairs." Apart from the fact that it is a false analogy, perhaps they do not know that the 'modern world' (which name these people assign to every new phenomenon when they are not prepared to entertain any doubt against its soundness) continuously calls man forth to hold the love of his wife in esteem, and to endure with patience the existence of rivals in matrimonial affairs. The modern world condemns cases of impatience with the names of envy, bigotry, in-tolerance, fanaticism, etc.. I wish that our young men were, to some extent, aware of the depth of what is going on in this respect in the west.

In view of this fact, polygyny rises from a social difficulty, and is not due to the innate nature of man. If there did not exist in society the problem of an excess of the number of women in need of marriage over the number of marriageable men, the custom of polygyny would have ceased to exist, or would have rarely existed. If we wish to completely abolish the custom of polygyny under these conditions (supposing that these conditions actually exist) a legal ban on it would be neither sufficient nor correct. For this purpose, a few other things are necessary. The first thing is social justice, and work with sufficient income for every man who wishes to marry, so that he may make proper arrangements for the peaceful environment of the family before he gets married. Secondly, freedom and independence for the woman in making the choice of a husband, so that she may not be given in marriage by her father, brother or any other person against her will to a wealthy man who already has a wife. Evidently if a woman has freedom and has a chance to marry a bachelor, she will not want to be the wife of a man who already has a wife, and will not like to go to face a rival wife. Are these the guardians of women who, out of their greed for money, sell away their daughters and sisters to moneyed men who already have wives?

Thirdly, the factors of stimulation, excitement and over-poweringly effective home-destruction should not be rampant everywhere. The factors of temptation attract married women from the homes of their husbands to the houses of strangers, to say nothing of unmarried women. If society wants reform, and in all earnest wishes to redeem and re-establish monogamy, it should try for the establishment of these three factors, otherwise legally tabooing polygyny will only pave the way for promiscuity and sensuality, and will not have any other result.

The crisis arising from the frustration of unmarried women:

Now, if the number of women who need to marry is above the number of marriageable men, forbidding polygyny is treason against humanity, as it is only trampling on the rights of women.

If the matter had ended there, it may have perhaps been accept-able, but the crisis which will arise from it will be more dangerous than any other crisis, because the peace of the family is more sacred than the security of any other institution.

The reason for this is that the person who is being deprived of her natural rights is a living entity, capable of all the reactions, which a living entity can display when it is deprived. That entity is a human soul, with all the mental and emotional consciousness and psychic complexes which result from failures. It is woman with the power of female magic: she is the daughter of Eve with all the potential to deceive Adam.

It is not wheat and barley which may be thrown into the sea when it is more than required, or which can be stored in the warehouse as a precautionary measure; it is not a house or a room that may be locked when not required. It is a living entity, a human being, a woman; she shall display her amazing power. She is bound to take complete vengeance on the social order of the world. She will say:

I tell you the truth, I cannot be patient

while others enjoy food and I merely look upon them.

This very thing, 'cannot be patient and look upon them', will do marvels. It shall ruin houses and families. It shall create complex problems, rancours and grudges. Woe unto mankind! When they are confronted with problems that come down upon them together with instinctive urges, both hand in hand.

The women deprived of a home life will do their best to entice man, who is not as unsteady and irresolute in any other matter as he is in this matter, and obviously "when there is more mud, even the elephant slips". We regretfully say that even a small quantity of this 'mud' is sufficient to make this elephant slip.

Will the matter stop here? No. It shall take into its embrace married women. The women who see their husbands in the state of unfaithfulness will also make up their mind to take vengeance upon their husbands, and will contemplate infidelity. They also will follow in the foot- steps of man. What will be the ultimate result ?

The ultimate result is written down in a short and a well-known sentence in the *Kinsey Report :* "In faithlessness and infidelity American men and women have beaten all the nations of the world."

Please see that the matter does not end with the corruption and immorality of man only. The flames of this fire will spread and ultimately scorch the skirt of the mistress of the house.

Various results following from the phenomenon of the excess in the number of women :

The phenomenon of the comparative excess of the number of women has always been there in the life of mankind. What is noticeable in this connection is that the reactions to this phenomenon, which create difficult problems for society, have not been alike. Those communities whose spiritual self is more imbued with piety and chasteness through the guidance of the great divine religions have solved this problem by means of polygyny, and those communities whom the values of piety and virtue do not so much suit have made of this phenomenon the means to sensuality and corruption.

Neither was polygyny in the east devised and originated by Islam, nor does the renunciation in the west have any connection with the Christian religion. For in the east the custom of polygyny existed before the advent of Islam, and eastern religions had allowed it; even in the original Christian religion there is no prohibitory commandment on this subject. Whatever is there,

there, depends upon the western nations themselves, and not the Christian faith.

Those communities that have settled for indulgence in sensual gratification and promiscuity have suffered more harm than those that approve of polygyny.

In his book, *The Life of Muḥammad,* after discussing the verse in the Qur'ãn concerning polygyny, Dr. Muhammad Ḥusayn Haykal says: "This *ãyah* considers it better to restrict oneself to one wife, and it says: if you fear that you cannot behave in conformity with justice, take only one wife; then it underlines that one cannot behave with justice. However, since there may arise occasions in the life of society when polygamy become necessary, it is recognized with the condition of justness in behaviour. In the midst of the wars of the Muslims, when some of them were killed and their wives naturally widowed, Muhammad (s. a. w.) acted in this way. Truly, can you say that after wars and epidemics and civil disturbances which leave thousands and millions of people dead and many women widowed, that restriction to one wife is better than several wives with the condition of fairness in behaviour? Can Occidentals claim that after the World War the law of restriction to one wife was enacted to the letter? " *

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* Translated from the Persian. (tr.)

DISADVANTAGES AND SHORTCOMINGS IN POLYGYNY

Matrimonial happiness and prosperity consists in purity, sincerity, forbearance, sacrifice, oneness and unity, while all these things are exposed to danger in polygyny.

Besides the unusual condition of the wives, and the children with two different mothers, as also the man himself, there are such burdensome and bewildering responsibilities that to meet them is to do away with all pleasure and ease of life.

Most of those people who are satisfied and happy with polygyny are those who practically ignore the religious obligations and moral responsibilities. They take an interest in one wife and totally neglect the rights of the other wife, and, in the words of the Qur'ãn: "leave her alone like someone hanging on". This thing these people call polygyny is, as a matter of fact, some-thing in the nature of monogamy with some added cruelty, crime and savagery.

There is a vulgar saying common among people. They say, "One God and one wife."

Most men had and still have the same belief. If we regard the joy and pleasure of life as the criterion and reflect on it from an individual and personal point of view, then that is the correct belief for them. It may not be universally true for all men, but for the majority of men it is the correct one.

If a man thinks that polygyny, with all its religious and moral obligations, is in his interest, and considers it worthwhile for his own pleasure, he is seriously mistaken. There is no doubt that monogamy, from the point of view of personal joy and well-being, is preferable to polygyny, but . . .

A correct analysis :

Research into the right or wrong of matters like polygyny which arise from personal and social necessities is not correctly done by comparing it with monogamy.

Correct_ research into this kind of problem depends, on the one hand, on keeping in view the causes and motives that necessitate their coming into existence, and then seeing what the consequences are and why they are usually ignored. Then, on the other hand, we should take into account the evil effects and the consequential shortcomings that arise from these very problems. It is only then that a judicious and overall examination of the effects and consequences that arise from either side of the problem can be made. It is only in this way that problems of this nature, in their real form, can be seriously propounded and deliberated upon. To explain myself I would like to give an example. Suppose we want to think about conscription. If we look at it from the angle of the benefits and advantages to the family to which the man, recruited under compulsion, belongs, undoubtedly the law of compulsory military service is not a good law. How good it would have been if there had been no law of conscription, and the dear ones of the family had not gone far away, and, it may happen, if they had not been dragged in the soil and blood of the battlefield.

Anyhow, it is not correct if we look into this problem in this way. The proper way to analytically solve this problem is that along with attention to the separation of the son and the fear of loss to the family, the consequences of the non-existence of the country's defensive forces should be kept in view. It is only then that one can realistically and logically arrive at the conclusion that a number of the sons of the homeland should be prepared to go as soldiers to defend their country, and that their families should bear the sufferings consequent on military operations.

We hinted in our preceding discussion at the personal and social needs which sometimes justify polygyny. Now we propose to look into the disadvantages and ill consequences of polygyny, so that a basis may be available for a thorough examination of the problem. By the way, we want it to be understood that, while we admit that there is a series of unfortunate consequences in polygyny, we nevertheless do not accept some of the objections and misgivings raised against it, as will soon be made clear. The disadvantages of polygyny which are worth mentioning are many, and we shall discuss them under different headings.

From the phychological point of view :

Matrimonial relations are not limited to material and physical matters, that is, they are not confined to bodily and monetary matters. If they had involved only this much, polygyny would have been justifiable because the material and physical things could be shared among numerous individuals and to everyone a part could be given.

In matrimonial relations the main and basic thing is the spiritual and emotional aspect. This is love, emotions and the feelings. The focus and point of unison for matrimony in both sides is the heart. Love and feelings, like other psychological matters, are not divisible and cannot be divided into portions. It is not possible to distribute and ration them out among several persons. Is it possible to cut the heart into two halves, and devote it to two situations? Is it possible to surrender it to two individuals? Love and adoration knows only one person and does not acknowledge a partner or a competitor. It is not like barley and wheat which can be weighed out and distributed to everybody. Besides that, the feelings cannot be controlled: man is under the control of the heart while the heart is not in the control of man. So the thing which is the real spirit of matrimony, its human aspect which distinguishes two human beings from two animals, which is not limited to sexual and instinctive drives, is neither divisible nor controllable, and so polygyny is out of question.

We believe that the above statement is somewhat exaggerated. Though it is true that the real spirit of matrimony is the feelings and the sentiments, and that it is also right that heart-felt emotions are not under the control of man, to say that the feelings are not divisible is merely a poetic fancy and a deceptive fallacy. There is no question of dividing any particular sentiment into two parts, like dividing a physical body and handing over to each one its share, in justifying the idea that emotional matters are not divisible. The question is to do with the mental or emotional capacity of a human being. Undoubtedly the emotional capacity of man is not so limited that he is unable to be attached to more than one person. A father may have ten sons, and he may love them all to the point of devotion, and make all sorts of sacrifices for them all.

We certainly accept that love and the sentiments do not rise to the same height in the case of several persons as they do in the case of a single individual. The rising of love and the sentiments to such heights does not fit in with polygyny, just as it does not fit in with reason and logic.

In *Marriage and Morals,* Russell says: “Many persons of the present age consider love the equitable exchange of sentiments and this argument by itself, leaving aside all other arguments, is sufficient for the rejection of polygyny.”

I am at a loss to appreciate this proposition. If he claims that the exchange of sentiments should be equal and reciprocal, and as a consequence should be exclusive and monopolistic, the proposition is just not tenable. When a father loves his several children and those children likewise love their father, the reciprocity is not evenly balanced. Many a time the position is that in ‘spite of the sons being several, the attachment of the father to every one of his sons outweighs the attachment of each son to the father.

What is surprising is that this thing is said by a man who is always exhorting husbands to honour the love of their wives for

a stranger, and who says they should not stand in the way of their wives' love affairs. He correspondingly puts in the same advice for the wives. According to Russell, is the exchange of sentiments then still equal between husband and wife?

The point of view of up-bringing:

A rival wife is a bi-word for discord. For a woman an enemy deadlier than a rival wife does not exist. Polygyny opens the way for confrontation and strife between the wives and in certain cases with the husband also. The environment of married life, which should be a milieu of peace and cordiality, is transformed into a battlefield, into a site of malice and revenge. The enmity, rivalry and hatred between the mothers is transmitted to their respective children. Two or more hostile groups are formed. The family environment which is the first school and spiritual nursery for children, and should be the inspirer of righteousness and courtesy, becomes an institute of discord and foul play.

There is no doubt that polygyny paves a way for all these unpleasant impressions in connection with the up-bringing of future generations. However, one salient point should not be lost sight of, and it is this: it should be examined how much these impressions arise from the very nature of polygyny and how much they are due to the attitude which the husband and the second wife assume. We believe that all these troubles do not arise from the nature of polygyny itself. Very many of these troubles spring from the way it is put into practice.

A husband and a wife live together and their life proceeds in its normal course till the husband comes in contact with a woman and is fascinated by her and the fancy for another marriage gets a hold of him. Then after surruptitious negotiations and secret agreements, all at once a second wife steps into the house, the previous refuge of the first wife, and grabs her husband and her life. The new-corner makes a surprise attack by

night on the life of the first wife. Evidently the mental reaction of the first wife is bound to be nothing except that of grudge and revenge. There is nothing more distressing for a wife than to be despised by her husband. The deadliest defeat for a woman is that she should feel that she was unable to win and retain the heart of her husband, and see that somebody else has won him over. When the husband assumes an attitude of obstinacy and capriciousness and the second wife maintains the stance of a surprise attack, then to expect forbearance and fortitude from the first wife in these circumstances is hoping against hope.

However, if the first wife feels that her husband is justified in what he has done, and is not fully satisfied with just her, and that the bringing in of a certain number of wives does not mean giving her the cold shoulder, and if the husband on his part does not pose an attitude of wilfulness, obstinacy and capriciousness, and if he adds to his regard, care and kindly feelings for the first wife; likewise if the second wife is considerate, and is alive to the fact that the first wife has certain inviolable rights and to encroach upon them is not permissible; if everyone concerned takes special care to take steps to solve a social problem, undoubtedly most of the internal worries will be alleviated.

The law of polygyny arises from a progressive and advanced outlook in solving a great social problem, and so, inevitably, its promoters must put it into practice on a high moral level; they should be gifted with a higher Islamic vision.

It has been observed that in cases where the husband did not assume an attitude of wilfulness and capriciousness, and the first wife acknowledged that her husband was really in need of a second wife, she herself took the initiative for that purpose and brough the second wife to the house of the husband, and none of the above-mentioned troubles were created. As a matter of fact most of the troubles arise due to the unmanly ways that men adopt in putting this legal right into practice.

From the moral point of view :

They say that permission for polygyny is permission for a promiscuous and lustful life. It is permission for man to indulge in sensualism. Morality demands that one should lessen and combat ones passions to the lowest possible degree, for it is the nature of mankind that as much as one allows freedom to one's passions, the appetite and desire increases, and the passions are all the more excited.

In *L'Esprit des Lois,* Montesquieu says concerning polygyny: "The King of Morocco has in his harem women of all races, white, yellow and black, but if he had twice that number even then he would have desired more women. The reason is that sensuality is like stinginess and meanness. The more one indulges in it the more it increases, just as when one gets a large amount of wealth, the greed for more wealth and riches increases. Polygyny also leads to the usage of unnatural (homosexual) love affairs, because, when someone is involved in lustful practices, any action which is in transgression of the normal limits induces one to other perversions. When there was a revolt in Istanbul, not even one woman was found in the palace of its ruler, because he indulged solely in unnatural sexual practices.".

This objection should be examined from two aspects: One aspect is, they say, that good morals are incompatible with sex, and that for moral purity sexual inclinations should be curbed to the lowest possible degree. The other psychological aspect., they claim, is that it is the nature of a human being that the more his requirements are met the more he longs for better and more, while the more these desires are curbed, the more he is relaxed and is calm.

Now, concerning the first aspect of the objection, we would regretfully say that it is wrong. The Christian code of ethics has self- mortification as its base and is impressed by Hindu and Buddhist ethics and the ethics of the Cynics. Islamic ethics is

not based upon this maxim. Islam does not uphold the view that the more one curbs his passions the nearer he approaches to a higher standard of morality (and that if he curbs his passions to zero point, he is a hundred per cent pious). Excessive voluptuousness is, of course, incompatible with morality.

To decide whether polygyny is an act of extravagance, we should see whether man is by nature monogamous. In a previous discussion, we arrived at the conclusion that today not a single person can be found who thinks that man is by nature monogamous and considers polygyny to be an act of excess and extravagance. On the contrary, the belief of many persons is that man naturally tends towards polygyny, and that monogamy is something like a bachelor's life which is against the nature of man.

Although we do not subscribe to the view that man is by nature polygamous, yet neither do we maintain that the nature of man is monogamous, and that polygyny is against the nature of man, a sort of perversion which is against the nature of man like homosexuality.

Those like Montesquieu who consider polygyny equivalent to voluptuousness have their eyes on the question of the harem. They think that Islam meant levelling the grounds for the harems of the 'Abbãsid and Ottoman caliphs and others like them. Islam is against these acts more then anybody else. The limits and conditions that Islam has laid on polygyny have altogether barred a licentious man's freedom.

We now take up the other aspect of the question that the more a person is provided with his requirements, the more his longings and desires are excited, and conversely, that the more a man's desires are curbed, the more peaceful he becomes. This statement is exactly contrary to the belief which is nowadays held by the followers of Freud and regularly propagated by them.

Freudians say that human nature finds peace and tranquility

by satisfaction and satiation, and by abstinence the longings and desires are intensified and stirred up. So this group is a hundred per cent in favour of freedom and the breaking of all formalities and conventions, especially in sexual matters. We wish that Montesquieu were alive today to see how his theory is ridiculed by the Freudians.

In the view of Islam, both of these beliefs are mistaken. Human nature has rights and limitations, and those rights and limitations should be understood. Human nature rebels and is perturbed as a result of two factors. One is deprivation, and the other is being given full liberty, removing all checks and limitations.

However, neither is polygyny an immoral act, nor is it a cause for reproaches by the conscience, nor is it against piety as people like Montesquieu said; nor is being content with one legal wife or wives against morality, as the Freudians actually say.

From the point of view of rights :

By virtue of the marriage contract, each of the married couple is attached to the other and becomes part and parcel of the other. The right to get satisfaction and contentment is reciprocal, which means that each of the parties is equally entitled to all benefits which come from the other. On this basis, when the husband marries another wife, the first rightful person is the first wife. The deal that the husband concludes with another woman is, as a matter of fact, an 'unauthorized' contract. The reason is that the subject matter of the bargain, namely the benefits of marriage with regard to him, have previously been sold out entirely to the first wife and are the part of her rights. So the person who first of all matters is the first wife. If, however, the husband intends to marry a second wife it should depend upon the permission and consent of the first wife. It is really the first wife who is empowered to take a decision with regard to her husband and whether he should marry another wife or not.

For this reason marrying a second, third and fourth wife is exactly like selling certain goods, which he has already sold to someone, for a second, third and fourth time to someone else. The genuineness of this transaction depends upon the consent of the first, second and third owners. If the seller actually transfers the said goods to the latter persons and puts them in possession thereof, he surely deserves punishment.

This objection rests upon our assuming that the nature of the rights created on account of the marriage is a deal of exchange of profits, and on our supposing that each one of the married couple is the owner of profits accruing from the other. I will not here discuss this interpretation, which is, of course, doubtful and objectionable. We may, for the while, suppose that the nature of rights created by marriage is as asserted.

This objection may be relevant only when this step is taken by the man for the sake of amusement and out of a desire for variety. Evidently, if the nature of the marriage union is an exchange of interests, and the wife is in a position in every respect to guarantee her husband's interests, the husband would not be justified in taking another. However, in case mere entertainment and variety is not meant, but one of the grounds of justification which we pointed out in our last articles, this objection would not be valid. For example, if the wife is barren or has reached the menopause and the husband wishes to have children, or if the wife is ill and not fit to performance of the functions of a wife, how could the objection be maintained? In cases like these the right of the first wife would not stand in the way of polygyny.

Anyhow, all this is if the justification of polygyny is a personal matter related to the husband. However, if there is a social imperative, and polygyny becomes an altruistic obligation due to the excess of the number of women over the number of men, or if it is resolved to be necessary in the public interest to increase the number of the population, this objection would be viewed differently. On. occasions like that polygyny would be a general

obligation and a binding duty for the deliverance of society from corruption, immorality and prostitution; similarly when, for the increase of the population, this public duty is to be performed. Obviously where there is the question of a social duty, the permission and consent of anybody is meaningless. If we consider that society is really suffering from an excess in the number of women over the number of men, or is in need of an increase in the population, there is a duty for, and a general obligation on, all married men and women. There arises a question of sacrifice and self-denial for the married woman for the sake of an altruistic good. It is exactly like the responsibilities of military service which are faced by the families of the recruits. They should bear the heartfelt agony of parting with their dear ones and sending them to the battlefield. On such occasions as that it is a mistake to make it conditional on the consent and permission of the interested parties.

Those persons who claim that rights and justice demand that polygyny should be with the permission of the first wife have in their mind only those cases when that step is taken for the sake of pleasure and a desire for change and have altogether ignored the cases of personal as well as social necessity. In principle, if personal and social forces, do not exist, polygyny even with the permission of the first wife, is not acceptable.

From the philosophical point of view :

The law of polygyny is inconsistent with the basic philosophy of the equality in the rights of men and women which rests upon their equality as human beings. As a man and a woman are both human beings, and have equal rights, they should either both be allowed to have several spouses, or neither of them should be allowed to have more than one. However, the idea that a man should have the freedom to have several wives, while a woman should not have the freedom to have several husbands is an unjust discrimination, and an act of undue favour to man: To allow a man to have upto four wives means that the value of one woman

is equivalent to one fourth of the value of man. This is an extremely insulting thing for a woman and is inconsistant with even the Islamic view in connection with inheritance and evidence where-in the evidence of two women and the share in inheritance of two women is equal to the evidence and share in inheritance of one man.

This objection is one of the most foolish objections that are levelled against polygyny. It seems that those who try to find fault with polygyny have not given the least attention to the rationale and obligations of individuals and society. They seem to think that the only subject under discussion in connection with polygyny is its physical aspect, and that is why they say the sensuality of men is being attended to, but the sensuality of women is ignored.

As we have previously examined in detail the causes, obligations and cases of justification of polygyny, especially with reference to the situations where polygyny becomes a right of unmarried women to be claimed from men and married women, we shall not discuss the matter any more.

Here we shall only say this much that if the basis of Islamic philosophy in polygyny, inheritance and evidence were an insult to women, and the result of indifference towards their rights, and if Islam had believed in discrimination between men and women, it would have consistently maintained this attitude. It would not have ordained in one place that a woman shall inherit half the share of a man, and at other place ordained that a woman shall inherit as much as that of man. Similarly, on another occasion it would not have said that a man may marry upto four wives. It would not have commanded a particular course in particular situations. By this, it can clearly be understood that Islam has some other philosophy in view. In a previous section we have explained the matter of inheritance, and in another part we have said that in the view of Islam the matter of man and woman as human beings and the rights accruing from that position is a basic and fundamental

matter. In the view of Islam, there are certain matters with respect to man and woman which are far above the question of equality, and it is necessary that these things should be scrupulously observed and enforced.

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THE ROLE OF ISLAM IN POLYGYNY

Islam neither devised the system of polygyny, because this existed centuries before the advent of Islam, nor did it abolish it, for, in the view of Islam, difficulties would arise for the society, the solution of which depends exclusively upon polygyny. Nevertheless, Islam brought about reforms in these customs.

Limitations :

The first reform that Islam enforced was that it imposed restrictions upon it. Before the advent of Islam there was no limit to the number of wives. One man could keep hundreds of wives and thus establish a harem for them. However, Islam put a maximum limit on their number, and an individual was not allowed to have more than four wives. In narrations and traditions, the names of those men who had more than four wives when they accepted Islam have been mentioned, and how their faith in Islam obliged them to give up the number in excess of four. Of those men, one called Ghilan ibn Aslamah, who had ten wives, is mentioned, and the Prophet of Islam ordered him to give up six of them. Likewise, a man called Nawfal ibn Mu'awiyah had five wives. After his conversion to Islam the Holy Prophet ordered him to let one go.

In Shi'ite traditions it is related that an Iranian Magian (Zoroastrian), in the days of Imãm (Ja'far) as-Ṣãdiq (a.s.), was converted to Islam while he had seven wives. The Imãm was asked what the man, who was by that time a Muslim, should do regarding his seven wives. The Imãm replied that he must let three of them go.

Justice :

The other reform that Islam enforced was that it made it a condition that there must never be, for any reason, discrimination between the wives or their children. The Qur'ãn most explicitly commanded: " فَإِنْ خِفْتُمْ الاّ تَعْدِلوا فَواحِدَةً "

If you fear that you will not be equitable, then only one (wife). (4:3)

In the pre-Islamic world there was no regard for justice in any respect, neither as regards the wives themselves nor as regards their children. In a previous section we quoted from Christenson* and others that in the Sassanian era in Iran polygyny was customary, and that the people believed in discrimination between wives as well as between their children. The distinguished wives were called "*pãdshãh-e zan*" and they had full rights, while the other wives were called "*chakir-e zan*" etc. (servant wife), and their legal status was lower. The children of *chakir-e zan* if males, were accepted as sons in the house of their father, and if daughters, were not accepted at all.

Islam abolished all these customs and usages. It did not allow a lower legal status for any wife or for any of her children.

In the first volume of his The Story of Civilization, Will Durant writes, concerning the discussion of polygyny: "As the wealth of someone gradually reaches sizeable proportions, and he becomes anxious that, since his wealth will be divided into many parts, the capital of each of his children will be small, this person begins to think that he should distinguish between his original and favourite wife and his concubines, so that his legacy may become the exclusive lot of the children of his original wife."

The result of all this is that discrimination between wives and their sons was a common thing in the ancient world, but what is surprising is that Will Durant then says, in his own words:

"Up to the present generation, roughly, marriage was of this kind in the Asian continent. Gradually the original wife takes

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* See note p.328.

the role of the exclusive wife, and other wives either become secret loves or else disappear altogether. ” *

Will Durant did not notice, or did not want to notice that it is now fourteen centuries since, under the auspices of Islam, the custom of discrimination between children was abolished. The keeping of one as the main wife, and the others as secret loves is the European custom and not the Asian. This custom has of late been contagiously transmitted to Asia.

In any case, the second reform that Islam enacted was that it put an end to all discrimination, whether between the wives or between the children.

According to Islam, favouritism in any form and in any manner between the wives is not permissible. The jurists of Islam are almost unanimously of the opinion that discrimination among wives in any respect is impermissible. Only a few groups among the jurists of Islam have interpreted the rights of wives in such way which is conducive to discrimination. I feel no hesitation in saying that this view is not correct, and is against the meaning of the above Qur'ãnic verse. The Holy Prophet said one thing about this which both Shi'ahs and Sunnis have referred to and quoted. The Prophet said: "Anyone who has two wives and does not be-have with them with justice and shows more inclination to one than the other, he will be resurrected on the Day of Judgement, and one side of his body will be dragged along the ground till at last he shall enter the Fire."

Justice is the most excellent human virtue. To make justice a condition means requiring that people attain the highest moral strength. When we look with due attention at the fact that generally the emotions and likes of a husband are not alike, we can see

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* Translated from the Persian, original untraced. (tr.)

that uniformly similar treatment towards each of his wives, observing justice and abstaining from discrimination, should be regarded as one of the most difficult tasks for a husband.

We all know that the Holy Prophet in the last ten years of his life, that is, during the period he was in Medina, which was the period of the Islamic wars when there were many unmarried women amongst the Muslims, married several women. Most of the wives of the Holy Prophet were widows and were of advanced age, and most of them had had children by their deceased husbands. The only virgin whom he married was ‘A-ʾishah, who used to boast with other wives only on this count, saying that she was the only woman whom no husband, except the Holy Prophet, had touched.

The Holy Prophet observed the utmost justice with regard to each and every one of them, and never discriminated in favour or against any one of his wives in any respect. ‘Urwah ibn Zubayr, the son of ‘Ã’ishah’s sister questioned his aunt about the behaviour of the Holy Prophet with his wives. ‘A’ishah said: “The Prophet as a rule never discriminated against any one of us as opposed to another. He treated every one of his wives in a scrupulously just and uniform manner. It was very seldom that he did not call daily on each and every one of his wives to enquire about her welfare. There was a rota system for every one of his wives but he did not fail to enquire about the welfare of others, and then he would pass the night in the residence of the wife whose turn it was. If it was not the turn of a wife, but it happened that the Prophet wanted to stay with some other wife, he used to come and formally seek the permission of the wife whose turn it was. If she allowed him, he used to go, otherwise he would not. I was personally of the attitude that whenever the Prophet sought my permission, I always turned down his request.”

The Holy Prophet even during the illness which resulted in his death, when he had no strength to move about, acted with full and complete justice. To observe justice and in compliance

with the rota rule, his bed was taken each day from room to room, till one day he assembled all of his wives and sought their permission to stay in one room, and every one of them allowed him to stay in the room of 'Ã'ishah.

'Ali ibn Abī Ṭãlib (a.s.), in the days when he had two wives, even if he wanted to perform his ablution, would not perform it in the house of the wife whose turn was not on that day. Islam is so particular about justice that it does not allow one even to make a proviso on the occasion of the marriage contract with the second wife that she should live with unequal status and with unequal living conditions as compared to the first wife. This means that in the view of Islam the observance of justice and equal behaviour is an obligation from which a husband cannot be absolved even by a condition arranged with the second wife. Neither a man nor a woman has the right to put in any proviso to that effect in the marriage contract. The second wife can do this much: she can in practice, dispense with her rights but she must not agree to the condition that she does not have rights equal to the rights of the first wife. Just as the first wife also can willingly and voluntarily relinquish her rights, but she must not take any legal step to the effect that she shall have no rights. Imãm Muhammad al-Bãqir (a.s.) was questioned as to whether it was possible for a man to make it a condition with his wife that he would call on her only for one hour a day, or meet her only once a month, or once a week, or make it a condition with her that he would not give her full maintenance equal to his other wife, and for the wife herself to agree to those conditions from the beginning? The Imãm ordained, "No. Such conditions as these are not permissible. Every woman, by virtue of the marriage con-tract, automatically and compulsorily creates the full rights of wifehood for herself. The only thing that is permissible is that after the marriage any wife can in practice give up, of her own free will, all or part of her rights, to seek the pleasure of her husband, so that he might not repudiate her, or for some other reason."

Polygyny with this strict and severe moral condition, instead of being a source of sensuality for man, takes the shape and form of the performance of a duty. Sensuality and lasciviousness is compatible only with complete liberty and free indulgence in one's desires. Sensuality takes the form of action when man de-livers himself to the dictates of his heart, and his heart is over-powered by alluring desires and fancies. The heart and its desires do not obey logic and do not reckon limits. Where the question of discipline, justice and the performance of a duty come in, sensuality and licentiousness should be done away with. These are the reasons that polygyny, with its Islamic conditions, cannot in any way be regarded as a source of licentiousness.

Those who have made polygyny a source of indulgence in sensuality, have made the Islamic law an excuse for a misdeed. Society has the right to take them to task, penalize them, and take that excuse out of their hands.

The danger of injustice :

As a matter of fact those individuals who can observe full justice with a number of wives are very few. In Islamic jurisprudence it is said: "If you fear that it may be harmful for you to use water, do not make the ablution. If you fear that the keeping of the fast is harmful for you, do not keep the fast." These two rules of jurisprudence are known to everybody. You might have heard people saying : "I am afraid water will harm me, should I make the ablution? I am afraid that fasting will be harmful to me, should I fast?" Certainly these questions are valid. These persons should not make the ablution and should not fast.

Nevertheless, it is ordained in the Qur'ãn: "If you fear that you shall not be able to behave justly among your wives, do not have more than one woman as your wife." In spite of that did you ever hear during your life from even one individual: "I want to marry a second wife, but I am

afraid I may not be able to observe justice and equality between my wives, should I marry?" I have never heard anyone saying this and I am certain that you also have not heard this. It is so easy. Our people in the full know-ledge and with full intention that they will not behave with justice, marry several wives, and do it in the name of Islam and under the cover of Islam. These are the people who misrepresent and discredit Islam by their mischievous deeds.

If these persons who act according to the custom of polygyny would at least fulfil this one condition, there would be nothing objectionable in it.

Harems :

The other matter, which tends to bring up a lot of criticism against Islam on account of polygyny, is the organization of harems by the caliphs and kings of the past. A number of Christians writers and missionaries have represented polygyny in Islam as being the same as the setting up of harems, with all their shameful manifestations and limitless cruelties, and have given to understand that the polygyny in Islam actually meant the same thing as the harems of the caliphs and Muslim kings.

It is a pity that some of our own writers echo word by word the ideas, beliefs and attitudes of occidentals. Wherever they mention polygyny they class it with harems. They do not have sufficient strength of character or independence of thought to be able to distinguish between the two things.

Other conditions and possibilities :

Besides the condition of justice, other conditions and duties are also the responsibility of the man. We all know that a wife, by herself, has a series of rights, both financial and sexual, which must be met by the husband. A man has a right to decide to have a number of wives provided his financial resources permit him to take that step. A sound financial position is a condition when

there is only one wife as well, but it is not the suitable moment to enter into a discussion of this subject.

Physical capability and stamina is also, by itself, another condition which the man must have.

In *al-Kãfī* and *Wasã'il** it is related that Imãm aṣ-Ṣãdiq (a.s.) said: "If any man gathers a number of women around him and is incapable of giving them full sexual satisfaction, and, as a result of this, these women are led to adultery and promiscuity, that per-son is answerable for the sin of these illegal acts." The histories of harems contain so many tales of youthful women who were gifted with hot instinctive passions, and who used to have recourse to promiscuous behaviour, after which promiscuities murders and other crimes were occasionally committed.

After a perusal of the seven sections that I have written in all regarding polygyny, my worthy readers may have fully understood the origin, the causes and the occasions of justification of polygyny and why Islam did not abolish it, as well as under what conditions, limits and restrictions it is permissible. It may have become clear to them that Islam, by declaring polygyny permissible, did not mean to degrade woman; instead it has done her a great service. If, in case of a proportional excess in the number of women fit and in need of marriage over the number of marriage-able men, which always has been and always will be, polygyny is not allowed, women become the lowest plaything of men. The behaviour of men towards them becomes worse than towards a slave-girl. The reason for this is that in case of a slave-

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* *Kitãb al-Kafi,* vol.5, p.566 (Tehran ed.)

Wasã'ilu 'sh-Shi'ah, vol.14, p.571 (Tehran ed.). *Wasã'ilu 'sh-Shi'ah* is the largest and most well-known collection of *ḥadīth* from the Prophet and Imãms in Shi'ite jurisprudence (*fiqh*). It is in 20 volumes, and was compiled by Shaykh Muhammad ibn al-Ḥasan al-Hurr al- 'Ãmilī.

of a slave-girl the man honours his undertaking at least in so far as he acknowledges her issue to be his child, while in the matter of a girl-friend, there is not even this much of an idea of any undertaking.

Modern man and polygyny :

Modern man refrains from polygyny. Why? Is this attitude of modern man the result of his desire to remain faithful to his wife and to be content with one wife, or is it for the purpose of gratifying, to the utmost extent in a sinful way, his longing for variety, the resources for which are available to him? Today sin has taken the place of polygyny and not faithfulness. That is why man has a strong resentment against polygyny. It creates certain obligations and duties for him, so he has a strong grudge against it. If the man of the past desired variety and took to promiscuous acts, the sources of sin would not have been to this extent available to him. He was helpless, and so under the cover of polygyny, he indulged in sensuality. In spite of the fact that he used to shirk many of the responsibilities, he could not avoid some of the financial and human obligations with regard to his wives and children, while the man of today is not confronted with any obligation or compulsion and is not bound to even the smallest commitment in connection with his limitless indulgence in sensuality. He should, as a result, necessarily take a stand against polygyny.

Modern man, on the supposed need of a secretary, a typist and on hundreds of other grounds, makes use of woman, and the financial burden falls upon the Exchequer of the State, or the company, or the foundation in which he is employed, without his having to spend a penny from his own pocket.

Modern man changes his girl-friends after short intervals without any need of the formalities of dower, maintenance or divorce.

Naturally, Moise Tshombe* is against polygyny because he always has a youthful, charming secretary by his side whom he changes every year. With all these possibilities what is the use of polygyny?

In the auto-biography of Bertrand Russell, who is one of the most headstrong opponents of polygyny, we read that in his early life, apart from his mother, two women created a great impression upon him. One of them was Alys, his first wife, and the other, his friend Lady Ottoline Morell, one of the well-known women of that period, and a friend of many of the early twentieth-century writers. Naturally, such a man could not favour polygyny.

It seems that it was his love- affairs which brought to an end his relations with his wife. Russell himself has written that one afternoon he resolved to ride to one of the country houses near the city on a bicycle, and that "all of a sudden, I felt that I no longer loved Alys."

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* One-time president of the secessionist Republic of Katanga, and for a short while premier of the Congo, he is famous for having once declared in a newspaper interview that one wife was enough when he could change his secretary every year.

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